

POLICY ISSUE
NOTATION VOTE

January 10, 2014

SECY-14-0006

FOR: The Commissioners

FROM: Mark A. Satorius
Executive Director for Operations

SUBJECT: TRIBAL CONSULTATION POLICY STATEMENT AND PROTOCOL

PURPOSE:

This paper provides to the Commission, for review and approval, a proposed policy statement and protocol on consultation with Federally-recognized Tribal governments. This paper also provides a plan and resource estimates to implement the proposed policy statement. The proposed policy statement will be published in the *Federal Register* for public comment upon Commission approval. These actions are in response to SRM-COMWDM-12-0001, "Tribal Consultation Policy Statement and Protocol" (SRM) (May 22, 2012) which can be found under the U.S. Nuclear Regulatory Commission's (NRC) Agencywide Documents Access and Management System (ADAMS) Accession No. ML121430233.

SUMMARY:

In SRM-COMWDM-12-0001, the Commission directed the staff to develop a policy statement and protocol that: (1) uses the existing, "Tribal Protocol Manual: Guidance for NRC Employees" (ADAMS Accession No. ML12261A423), and the staff's ongoing efforts, outlined in SECY-09-0180, "U.S. Nuclear Regulatory Commission Interaction with Native American Tribes" (ADAMS ML092800263), as a starting point; (2) seeks input on how to improve the existing manual from the Tribes and the public; (3) ensures that the policy statement clearly articulates that the NRC's actions must be in accordance with its governing statutes and regulations;

SECY NOTE: THIS SECY PAPER, WITH THE EXCEPTION OF ENCLOSURE 4 WILL BE RELEASED TO THE PUBLIC IN 10 WORKING DAYS.

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(4) ensures that the policy statement and protocol respect and reflect sensitivity between Indian Tribes who are Federally-recognized and those who are not; (5) ensures that the policy statement and protocol indicate that the NRC will conduct outreach to State-recognized Tribes on a case-by-case basis; (6) explores additional opportunities for State-recognized Tribes to participate in the NRC regulatory process; (7) serves as the high level foundation for the protocol and should echo the language and spirit of the relevant presidential memoranda and executive orders; and (8) makes the protocol prominently publicly available on the NRC's public Web site.

The staff completed the items listed in the SRM, developed a proposed policy statement, and revised the protocol manual after reviewing public comments.

BACKGROUND:

As an independent regulatory agency, the NRC is exempt from the requirements of certain Executive Orders (EOs) that direct the implementation of an agency-wide policy statement on Tribal consultation and coordination. The NRC's current practice for government-to-government interaction with Federally-recognized Tribes reflects the spirit of the relevant Presidential EOs and Memoranda, without establishing a formal policy. The NRC interacts with Tribal governments on a case-by-case basis, allowing the NRC and the Tribes to initiate communication and consultation. The NRC staff maintains working relationships with Tribal governments and Tribal organizations that have an interest in NRC regulated activities.

In SECY-09-0180, "U.S. Nuclear Regulatory Commission's Interaction with Native American Tribes," the staff communicated the determination that the NRC's case-by-case approach to Tribal interaction was effective and met the needs of the Commission and the Tribes (December 11, 2009) (ADAMS Accession No. ML092920384). The staff concluded that Tribal interactions would not benefit from a formal Tribal policy at that time. Since then, an increase in NRC uranium recovery license reviews has resulted in more Tribes participating in these licensing actions and requesting consultation with the NRC on these activities. In particular, the Office of Federal and State Materials and Environmental Management Programs (FSME) staff has expended considerable resources on Tribal consultation to comply with the procedural requirements of Section 106 of the National Historic Preservation Act of 1966, as amended (NHPA), during the licensing of uranium *in-situ* recovery (ISR) facilities. As of October 2013, the staff has conducted outreach with 32 Tribes regarding 8 ongoing licensing actions for new or existing ISR facilities. FSME anticipates receipt of an additional 8 to 12 applications for ISR licensing actions in Fiscal Years 2014 and 2015.

In COMWDM-12-0001, "Tribal Consultation Policy Statement and Protocol," Commissioner Magwood suggested that the increase in consultation activity for ISR licensing, along with a Commission meeting regarding the Generic Environmental Impact Statement for license renewal of uranium recovery facilities, "... have highlighted the lack of clarity that sometimes exists with respect to NRC consultations with Tribal governments" (January 18, 2012) (ADAMS Accession No. ML120180132). The Memorandum noted that this issue has been recognized within the Federal government through Executive Memoranda and Orders as well as a variety of other laws and regulations that require Tribal consultation and coordination. The Memorandum proposed that the Commission direct the staff to prepare a proposed policy statement and protocol on consultation with Tribal governments. In SRM-COMWDM-12-0001, the Commission

endorsed the COM and directed the staff to develop the proposed policy statement for Commission consideration.

Executive Orders and Presidential Memoranda

Executive Orders and Presidential Memoranda dating from President Nixon's "Special Message on Indian Affairs" in 1970 have addressed legislative and policy-making implications related to Federally-recognized Tribes. Presidents Ronald Reagan, George H.W. Bush, William J. Clinton, and George W. Bush issued EOs or Presidential Memoranda concerning the Federal government's relationship with Tribes. The Obama administration has also demonstrated a commitment to engaging the Tribal community, issuing a Presidential Memorandum on Tribal consultation in November 2009, and holding annual Tribal summits at the White House.

President Obama's 2009 Memorandum renewed the Federal government's commitment to EO 13175, "Consultation and Coordination with Indian Tribal Governments,"¹ issued by President Clinton (November 2000). This EO established the guiding principles for agencies forming and implementing policies with potential Tribal implications. In 2009, President Obama underscored the administration's commitment to EO 13175 by requiring Executive Departments and Agencies to report to the Office of Management and Budget their plan of action to implement the policies and directives of the EO 13175, and to submit annual progress reports regarding Tribal consultation activities. On June 26, 2013, President Obama issued an EO 13647, "Establishing the White House Council on Native American Affairs," to require certain Federal agencies to engage in nation-to-nation relationships with Tribes in a coordinated and effective manner to comply with Federal government obligations and trust responsibilities.

NRC Case-by-Case Interaction with Tribes

Although EO 13175 encourages independent agencies like the NRC to comply with its provisions, Section 1 of the EO excludes from its requirements "independent regulatory agencies, as defined in 44 U.S.C. §3502(5)." The NRC has demonstrated a commitment to achieve the EO's objectives by implementing a case-by-case approach to interactions with Federally-recognized Tribes. This case-by-case approach has established a foundation for government-to-government relationship that respects the right for Tribal self-government and self-determination. This approach has contributed to several successful consultations with Tribal governments. For example, the NRC entered into two Memoranda of Understanding (MOU) with the Prairie Island Indian Community (PIIC) for license renewal of the reactor units and the specifically-licensed independent spent fuel storage installation at the Prairie Island Nuclear Generating Plant. The PIIC participated as a cooperating agency on these reviews, which serve as examples of successful consultation. As noted previously, the NRC staff continues to consult with Tribal governments related to uranium recovery licensing activities.

¹ See <http://www.gpo.gov/fdsys/pkg/FR-2000-11-09/pdf/00-29003.pdf>

DISCUSSION:Development of Proposed Tribal Policy Statement and Revised Tribal Protocol Manual

Since SRM-COMWDM-12-0001 was issued, the staff has developed a proposed NRC Tribal Policy Statement (Tribal Policy Statement) that could be issued for public comment following completion of Commission review. [Enclosure 1](#) contains the draft *Federal Register* Notice issuing the proposed Tribal Policy Statement for public comment. [Enclosure 2](#) contains the Tribal Protocol Manual, revised by the staff following consideration of public comments. The staff is not seeking further public comment at this time on the revised Tribal Protocol Manual.

[Enclosures 1](#) and [2](#) were prepared by the Tribal Policy Working Group, led by FSME staff, with representatives from the Office of Nuclear Material Safety and Safeguards (NMSS), the Office of New Reactors (NRO), the Office of Nuclear Reactor Regulation (NRR), the Office of Nuclear Security and Incident Response (NSIR), the Office of the General Counsel (OGC), and NRC Region III. In an October 12, 2012 *Federal Register* notice (FRN), the NRC solicited public comments on the draft Tribal Protocol Manual and solicited suggestions on the development of the proposed Tribal Policy Statement (77 FR 62269). The NRC received six comment letters from two Tribal governments, two mining associations, one inter-Tribal organization, and a Tribal college. The staff also engaged in outreach with Tribal governments and other interested parties, including collaborating with the National Congress of American Indians to conduct mass mailings to 566 Federally-recognized Tribes, and participating in Tribal meetings hosted by Tribal organizations and other Federal agencies that included attendees from Federally-recognized and State-recognized Tribes. The draft FRN in [Enclosure 1](#) includes comments and responses related to the proposed Tribal Policy Statement. Comments and responses related to the Tribal Protocol Manual are included as background information for this paper and will be published in a separate FRN with the revised Tribal Protocol Manual, as approved by the Commission.

In preparing the proposed Tribal Policy Statement, the staff reviewed Tribal policy statements of Executive Departments and independent agencies. [Enclosure 3](#) contains the staff's summary of other Federal agency Tribal policies. Most of the policy statements included the following themes: (1) enhancing government-to-government relations; (2) meeting trust responsibilities with Tribes; (3) recognizing and respecting historic properties of religious or cultural importance; (4) recognizing rights of self-governance and determination; and (5) fully integrating the principle and practice of meaningful consultation and communication with Tribes. Most of the policy statements are agency-wide, broad in scope, and not limited to specific regulatory programs or statutory obligations such as NHPA Section 106 consultation. In many cases, the policies were supported at the agency by a designated Tribal official or Tribal office charged with Tribal interactions and consultation. Of the 21 Departments and Agencies that the staff surveyed, all had dedicated Tribal liaison staff and 16 had established a Tribal office.

Proposed Tribal Policy Statement

The proposed Tribal Policy Statement establishes the following six principles to be followed by the NRC to ensure effective government-to-government relations with Tribes, and to encourage and facilitate Tribal involvement in the areas over which the Commission has jurisdiction:

- The NRC recognizes the Federal trust relationship and will seek to uphold its trust relationship with Indian Tribes;
- The NRC recognizes and is committed to a government-to-government relationship with Indian Tribes;
- The NRC will seek to conduct outreach to Indian Tribes;
- The NRC will seek to engage in timely consultation with Indian Tribes on regulatory actions that have substantial direct effects on one or more Indian Tribes;
- The NRC will seek to coordinate with other Federal agencies on NRC regulatory actions that have substantial direct effects on one or more Indian Tribes; and
- The NRC will seek to encourage State-recognized Tribes' participation on a case-by-case basis.

The proposed Tribal Policy Statement accounts for the limited authority NRC has as an independent regulatory agency under the Atomic Energy Act of 1954, as amended (AEA), and identifies the Deputy Executive Director for Materials, Waste, Research, State, Tribal and Compliance Programs as NRC's Designated Tribal Officer. The proposed Tribal Policy Statement identifies the agency's responsibilities for intergovernmental consultation, as described in Management Directive 5.1, "Intergovernmental Consultation."² Finally, the proposed Tribal policy indicates that the NRC will continue to maintain FSME staff who have functional responsibility to serve as intergovernmental liaisons to the Tribes, per Management Directive 5.1.

COMMITMENTS:

- (1) Following Commission review and, as appropriate, publication of the proposed Tribal Policy Statement, the staff will continue outreach and communication to solicit comments from Tribal governments and organizations, the public, and other interested stakeholders.
- (2) The staff will review existing office-level guidance and training programs and determine if additional agency-level guidance and/or procedures will be required before the Commission approves the final Tribal Policy Statement, planned in FY 2015.

RESOURCES:

Resources have been allocated within the Nuclear Materials Users business line to fulfill the commitments above. FSME intergovernmental staff will continue to lead liaison efforts related to the Tribal Policy Statement development and implementation, with support from OGC, NMSS, NRO, NRR, and NSIR. The staff will continue to participate in Tribal meetings hosted by national and regional Tribal organizations. Resources have been allocated to support staff travel and Tribal Invitational Travel to conduct a Commission briefing before issuing the final Tribal Policy Statement. Also, resources have been allocated to cover training costs related to inter-agency collaboration. The resources for future needs beyond FY 2015 would be addressed through the Planning, Budgeting, and Performance Management process.

² See <http://pbadupws.nrc.gov/docs/ML0417/ML041770442.pdf>.

Enclosure 4 provides a preliminary agency-wide implementation plan for the proposed Tribal Policy Statement and revised Tribal Protocol Manual. The plan identifies office level considerations and resources necessary for FY2014-2015 implementation of the Policy Statement, along with near-term considerations. Over the next few years, the NRC Tribal policy implementation activities will be dynamic, and staff plans will be adjusted to satisfy changing demands and continuous improvement.

RECOMMENDATIONS:

The staff recommends that the Commission approve [Enclosures 1](#) and [2](#), and publication of [Enclosure 1](#) in the *Federal Register* for a 75-day public comment period.

COORDINATION:

The Office of the General Counsel has reviewed this paper and has no legal objection. The Office of the Chief Financial Officer has reviewed this paper for resource implications and has no objection.

/RA Michael F. Weber for/

Mark A. Satorius
Executive Director
for Operations

Enclosures:

1. Draft *Federal Register* Notice
2. *NRC Tribal Protocol Manual* (revised)
3. Review of Other Federal Agency Tribal Policies
4. Implementation Plan

NUCLEAR REGULATORY COMMISSION

[NRC-2012-0235]

Tribal Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed Policy Statement; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is making available for public comment the proposed Policy Statement, "NRC Tribal Policy Statement." The proposed policy statement establishes principles to be followed by the NRC to ensure 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 is committed to an open and collaborative regulatory environment in the development and implementation of activities that have Tribal implications and welcomes comments as a means of fostering meaningful consultation and coordination with Indian Tribes.

DATES: Submit comments on the proposed Tribal Policy Statement by [_____, 2014, 75 **DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER**]. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: You may access information and submit comments related to this document by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- **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: 301-287-3442; email: Carol.Gallagher@nrc.gov. For technical questions, contact the individuals listed in the FOR FURTHER INFORMATION CONTACT section of this document.

- **Mail comments to:** Cindy Bladey, Chief, Rules, Announcements, and Directives Branch, Office of Administration, Mail Stop: 3WFN-06-44M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

For additional direction on accessing information and submitting comments, see “Accessing Information and Submitting Comments” in the SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT: Michelle Ryan, telephone: 630-829-9724, e-mail: Michelle.Ryan@nrc.gov; or Haimanot Yilma, telephone: 301-415-8029, e-mail: Haimanot.Yilma@nrc.gov; both of the Office of Federal and State Materials and Environmental Management Programs (FSME), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

SUPPLEMENTARY INFORMATION:

- I. Accessing Information and Submitting Comments.
- II. Background.

III. Discussion.

IV. Summary of Public Comments and Responses to Comments.

V. Proposed Tribal Policy Statement.

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID: **NRC-2012-0235** when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this document by any of the following methods:

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

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

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

<http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "[ADAMS Public Documents](#)" and then select "[Begin Web-based ADAMS Search](#)." For problems with ADAMS, please contact the NRC'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.

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.

B. Submitting Comments

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

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

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

II. Background

The purpose of this proposed Tribal Policy Statement is to establish principles to be followed by the NRC to ensure 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) (16 U.S.C. §470) and National Environmental Policy Act (NEPA) (42 U.S.C. §4321), also 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 that require Tribal consultation, and interacts with Tribal governments on a case-by-case basis.

In November of 2000, President Clinton issued Executive Order (EO) 13175, "Consultation and Coordination with Indian Tribal Governments," (65 FR 67249). The Order established the three legal principles below to guide agencies when forming and implementing policies with potential Tribal implications. The EO 13175 states that "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 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 EO 13175. However, in January 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].” To that end, the Commission has adopted agency practices that ensure consultation and cooperation with Indian Tribal governments fully consistent with both President Clinton’s 1994 guidance and with EO 13175” (ADAMS Accession No. ML010260297).

In January of 2009, the Commission directed the 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 in a Staff Requirements Memorandum (SRM) for the December 2008 “Briefing on Uranium Recovery,” SRM-M081211 (ADAMS Accession No. ML090080206). The Commission also tasked the staff with preparing an assessment of the policies that other Federal agencies have developed for interactions with Tribal governments. The staff responded to this Commission direction in SECY-09-0180, “U.S. Nuclear Regulatory Commission Interaction with Native American Tribes” (ADAMS Accession No. L092920384). In this document, the staff provided a protocol for NRC Tribal interaction, assessed other federal agency Tribal policies, and examined the effectiveness of the NRC’s case-by-case approach to Tribal interaction. The staff also developed the NRC Tribal Protocol Manual as an internal protocol for interacting with Tribal governments (ADAMS Accession No. ML092990559). At that time, the staff concluded that formalizing the NRC’s practices would not enhance its interactions with Tribal governments. As a result, while the NRC’s current practices for government-to-government interactions with Indian Tribes reflect the spirit of Presidential EOs, they are conducted on a case-by-case basis.

Current NRC Practices for Interactions with Tribes

Numerous Federally-recognized Tribes have an interest in public health and safety, and environmental protection associated with NRC regulatory activities that include uranium recovery, nuclear power plants, and nuclear waste transportation, disposal, storage activities. The NRC exercises its fiduciary duty in the context of its authorizing statutes, including the AEA of 1954 as amended, and implements any fiduciary responsibilities through assuring that Tribal

members receive the same protections under implementing regulations that are available to other persons. Under the NRC's case-by-case approach to Tribal interaction, 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 at the earliest stage possible in NRC regulatory actions with Tribal implications.

III. Discussion

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

Consultation refers to meaningful and timely discussion with Tribal governments on NRC regulatory actions that have substantial direct effects on one or more Indian Tribes. The Consultation process may include, but is not limited to, providing for mutually-agreed protocols, timely communication, coordination, cooperation, and collaboration to provide opportunities for appropriate Tribal officials or representatives to meet with NRC management or staff.

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).

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 refers to a fiduciary obligation 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 fiduciary duty in the context of its authorizing statutes including AEA, the Energy Reorganization Act of 1974, as amended, the Nuclear Waste Policy Act of 1982, as amended, the Low-Level Radioactive Waste Policy Act of 1985, and the Uranium Mill Tailings Radiation Control Act of 1978, as amended, and implements any fiduciary responsibility by assuring that Tribal members receive the same protections under its implementing regulations that are available to other persons.

In May 2012, the Commission issued SRM-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 staff to do the following: (1) use the existing, "Tribal Protocol Manual: Guidance for NRC Employees," and the staff's ongoing efforts outlined in SECY-09-0180 as a starting point; (2) seek input on how to improve the existing manual from the Tribes and the public; (3) ensure that the policy statement clearly articulates that the NRC's actions must be in accordance with its governing statutes and regulations; (4) ensure that the policy statement and protocol respect and reflect sensitivity between Indian Tribes who are Federally-recognized and those who are not; (5) ensure that the policy statement and protocol indicate that the NRC will outreach to State-recognized Tribes on a case-by-case basis; (6) explore additional opportunities for State-recognized Tribes to participate in the NRC regulatory process; 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.

Since SRM-COMWDM-12-0001 was issued, the staff has developed a proposed Tribal Policy Statement and revised the NRC Tribal Protocol Manual. The NRC reviewed public

comments received both for suggestions on the proposed Tribal Policy Statement and for revisions to the Tribal Protocol Manual. The Commission is currently seeking public comments on the proposed Tribal Policy Statement. Although the NRC is not seeking public comment on the Tribal Protocol Manual at this time, it will be subject to periodic review and revision.

On October 12, 2012 (77 FR 62269), the NRC solicited public comment on its existing Tribal Protocol Manual and requested suggestions for the development of a proposed Policy Statement that will establish principles to be followed by the NRC to ensure 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 six comment letters from two Tribal governments, two mining associations, one inter-Tribal organization, and a Tribal college.

The NRC will publish in 2014 the revised Tribal Protocol Manual along with the public comments received on the prior version of that document. Once the NRC issues the final Tribal Policy Statement, the NRC will make conforming changes to the Tribal Protocol Manual, if warranted. The summary of public comments to the proposed Tribal Policy Statement and the NRC responses to those comments are provided below.

IV. Summary of Public Comments and Responses to Comments

The NRC solicited suggestions regarding the development of the proposed Tribal Policy Statement by posing the following questions: (1) How can the NRC strengthen government-to-government relationships with Native American Tribes? (2) What practices have the NRC or other Federal agencies employed that have been effective in identifying Tribal interests and resolving Tribal concerns about proposed agency actions? (3) Are there specific Tribal Policy Statements in other Federal agencies that could serve as a starting point for the NRC's efforts?

(4) What unique Tribal issues should the NRC be aware of as a non-landholding, regulatory agency that issues licenses under the Atomic Energy Act? Comments and responses related to these questions are listed below. Comments submitted that related to the Tribal Protocol Manual, but were useful to the development of the proposed Tribal Policy Statement, were also considered.

1. How can NRC strengthen government-to-government relationships with Native American Tribes?

Comment 1.1. Commenters suggested that the NRC may improve its government-to-government relationship with Tribes by developing a Tribal policy statement and engaging in regular dialogue with Tribes.

Response 1.1. The NRC agrees with this comment. Current staff efforts have centered on revising the NRC's Tribal Protocol Manual and developing an agency-wide Tribal Policy Statement.

The proposed Tribal Policy Statement recognizes the need for the NRC to seek out opportunities to engage Tribal officials regarding specific regulatory actions. It also recognizes that the need for general outreach may be accomplished through NRC participation in Tribal meetings that are held by the NRC's governmental partners. The proposed Tribal Policy Statement also underscores the NRC's commitment to its government-to-government relationship with Indian Tribes and reinforces the commitment through outreach and consultation. The proposed Tribal Policy Statement further underscores the NRC's commitment to its relationship with Indian Tribes by identifying NRC management and staff members responsible for overseeing Tribal consultation and coordination efforts.

Comment 1.2. Multiple comments centered on the importance of recognizing Tribal sovereignty and the unique legal status of Tribes as well as the Federal Trust relationship during the NRC's interaction with Tribes. Commenters noted that Tribes retain inherent sovereignty and should be considered to be governmental partners rather than "stakeholders." Commenters suggested that the NRC should recognize that Tribal governments have primary authority and responsibility for the protection of the health, safety, and welfare of their citizens and should be part of the government-to-government consultation process with respect to agency actions that may impact the citizens or lands of Indian Tribes.

Response 1.2. The NRC agrees with this comment. The Commission recognizes Tribal sovereignty and demonstrates a commitment to government-to-government relations with Federally-recognized Tribes, upholding the spirit of EO 13175. Congress authorized the Federal government to regulate specified radioactive materials to protect public health and safety and common defense and security in the Atomic Energy Act of 1954. The NRC has regulatory authority over these radioactive materials in areas of exclusive Federal jurisdiction such as Tribal reservations. However, the NRC exercises this regulatory authority in a manner consistent with the fundamental precepts expressed in EO 13175 and supports establishing regular and meaningful consultation and collaboration with Tribal officials in the development of Federal policies that have substantial direct effects on one or more Indian Tribes.

Comment 1.3. One comment suggested that the NRC should formally define the Federal Trust responsibility in detail.

Response 1.3. The NRC agrees with this comment with respect to defining the NRC's Federal Trust responsibility towards Indian Tribes. The proposed Tribal Policy Statement reflects the NRC's recognition of the Federal Trust relationship and the NRC's commitment to a government-to-government relationship with Federally-recognized Tribes with respect to agency actions that have substantial direct effects on one or more Indian Tribes.

The NRC exercises its fiduciary duty in the context of its authorizing statutes, including the AEA, and implements any fiduciary responsibility by assuring that Tribal members receive the same protections under regulations implemented by the NRC that are available to other persons. The NRC will seek to conduct outreach to Indian Tribes and consult with them on agency actions that have substantial direct effects on one or more Indian Tribes. Related staff guidance can be found in NRC Management Directive 5.1, "Intergovernmental Consultation," which ensures that major interagency agreements, major organizational changes, significant rules and regulations, statements of policy, guides and standards, and major studies developed by the NRC that significantly impact Indian Tribes are prepared with appropriate involvement and meaningful consultation with Indian Tribes at the earliest possible stage (ADAMS Accession No. ML041770442).

Comment 1.4. One comment noted that the NRC should provide refreshments during meetings with Tribes.

Response 1.4. The NRC recognizes that providing food during gatherings or meetings may be customary in Native cultures. Under Federal law, however, food and refreshments are generally considered to be personal expenses that cannot be purchased using Federal funds. The Commission must comply with Federal law pertaining to the provision of food or refreshments at meetings.

2. What practices have the NRC or other Federal agencies employed that have been effective in identifying Tribal interests and resolving Tribal concerns about proposed agency actions?

Comment 2.1. One commenter suggested that the NRC should utilize other Federal agencies in developing shared information tools to better communicate with Indian Tribes.

Response 2.1. The NRC agrees with this comment and works closely with other Federal agencies and interagency working groups on Tribal initiatives. The NRC routinely collaborates with other Federal agencies regarding Tribal consultations, and has a related Memoranda of Understanding with the U.S. Bureau of Land Management. Additionally, NRC staff examined Tribal policies in place at other Federal agencies during the development of the proposed Tribal Policy Statement. The proposed Tribal Policy Statement recognizes the importance of coordinating consultation efforts with Federal partners.

3. Are there specific Tribal Policy Statements in other Federal agencies that could serve as a starting point for the NRC's efforts?

No commenters identified specific Federal agency policy statements that should serve as a starting point for the NRC Policy Statement. However, the NRC staff examined other Federal agencies' Tribal policies and used them as a basis for developing the proposed NRC Tribal Policy Statement.

4. What unique Tribal issues should the NRC be aware of as a non-landholding, regulatory agency that issues licenses under the Atomic Energy Act?

Comment 4.1. Commenters submitted suggestions related to unique Tribal issues that the NRC should consider during the development of the proposed Tribal Policy Statement. Commenters indicated that the NRC should recognize the distinction between Federally-recognized and non-Federally-recognized State Tribes, noting that the NRC should consider State Tribes and other means for identifying Tribes that ratified treaties. Additionally, commenters noted that the NRC should consider the dynamics of the State and Tribal relationship, including the application of State regulations and policies to Tribal communities.

Response 4.1. The NRC agrees with this comment in part, and acknowledges the unique relationship that exists between the Federal government and Federally-recognized Tribes, and recognizes that this relationship is independent of any State recognition of Tribal sovereignty. The proposed Policy Statement identifies the distinction between Federal and State-recognized Tribes. This distinction is also reflected in the revised NRC Tribal Protocol Manual. However, the NRC cannot confer Federal recognition on non-Federally-recognized State Tribes, and defers to the Department of Interior for such actions. With regard to State regulation and policies, typically land within the boundaries of Federally-recognized Indian Tribe's Reservations is an area of exclusive Federal jurisdiction for NRC regulatory purposes.

Comment 4.2. Several comments stated the need for the NRC to understand the distinction between Tribal and Non-Tribal cultures, especially as they relate to energy development in Indian Country. Commenters suggested that the NRC should recognize that Tribal cultures vary from Tribe to Tribe, and that some may place more emphasis than others on natural resources. Comments also suggested that the NRC should account for differences in culture related to the decision-making process on energy development issues, allowing for flexibility in scheduling and input from members of Indian Tribes. Commenters noted that the NRC should not only recognize Tribal laws and spiritual beliefs pertaining to the environment and natural resources, but include discussions of risk assessment. Commenters suggested that the NRC should respect Tribal moratoriums and explicit concerns related to natural resource extraction on reservations or lands nearby. Commenters also suggested that the NRC should work with other local agencies and institutions to gain a better understanding of the complexities and uniqueness of each Indian Tribe.

Response 4.2. The NRC agrees with this comment and acknowledges that significant cultural differences may exist between Tribal and non-Tribal cultures, and between the different Tribal cultures. This is reflected in staff guidance provided in the Tribal Protocol Manual, which

identifies examples of cultural differences between Tribal and non-Tribal cultures and considerations for the NRC staff, including a recommendation to research Tribal history and current Tribal issues and concerns.

The NRC recognizes the importance that some Indian Tribes may place on natural resources. This is reinforced in the proposed Policy Statement which notes that the NRC will seek to engage in consultation with Indian Tribes on NRC regulatory actions that have substantial direct effects on one or more Indian Tribes.

The NRC recognizes that there are differences in how the NRC staff and Tribes may approach time and schedules during the decision-making process. The revised Tribal Protocol Manual has been updated to better reflect the cultural differences with respect to agenda planning and scheduling. The NRC recognizes that Tribal elders and others knowledgeable about religious and cultural traditions can play an important role in the Tribal community during the decision-making process related to energy development and other important decisions. Chapter 2 of the Tribal Protocol Manual recognizes that, "Tribal sovereignty includes the Tribe's right to reach decisions and conduct meetings however they wish," and notes that, "Elders are highly respected in Tribal communities, whether or not they hold an official position." When the NRC engages in government-to-government consultations, it does so with designated representatives of the Tribal government, but the NRC's regulatory process allows additional opportunities for members of the Tribal community at large, along with other members of the public, to contribute comments and attend meetings.

The NRC recognizes the Tribal views of natural resources and land impact decision-making related to energy development. Chapter 3 of the revised Tribal Protocol Manual notes that, "Some Native Americans believe that all living things are interconnected and that the spiritual and natural worlds are one. Because of this, perceived threats to their environment may be viewed as direct threats to their health, culture, and spiritual well-being." The Manual encourages the NRC staff to practice open communications, adaptability, and

open-mindedness during interactions with Tribal members, including during risk assessment activities. With regard to Tribal moratoriums or concerns related to natural resource extraction, the NRC respects the Tribal sovereignty and the Tribe's right to control the lands that are within their regulatory jurisdiction. The NRC licensees must obtain necessary permits or licenses from Federal, State, local or Tribal governments, as applicable, before operating under a NRC license. It is the NRC's practice to work closely with other Federal agencies and interagency working groups on Tribal initiatives to gain knowledge of Tribal cultures, beliefs, and environmental concerns.

V. Proposed Tribal Policy Statement

This section includes the proposed language in its entirety for the proposed Tribal Policy Statement, as follows.

The purpose of this proposed Tribal Policy Statement is to set forth principles to be followed by the U.S. Nuclear Regulatory Commission (NRC) to ensure effective government-to-government interactions with Indian Tribes, and to encourage and facilitate Tribal involvement in the areas over which the NRC has jurisdiction. It seeks to provide agency-wide 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 Tribal Policy Statement. This Tribal Policy Statement is based on the United States

Constitution, treaties, statutes, Executive Orders (EOs), judicial decisions, and the unique relationship between Indian Tribes and the Federal government.¹

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

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

As an independent agency of the Federal government, the NRC shares the unique trust relationship with, and responsibility to, Indian Tribes. At the same time, the NRC's actions must be in accordance with its authorizing statutes and regulations. The NRC shall respect Indian Tribal self-government and sovereignty, seek to honor Tribal rights, and strive to meet responsibilities that arise from the unique relationship between the Federal government and Indian Tribal governments.

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

¹ This Tribal Policy Statement is intended only to improve the internal management of the Commission, and 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.

dependent domestic sovereign nations, independent from State governments, with separate and distinct authorities.

3. The NRC Will Seek to 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 seek to 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.

4. The NRC Will Seek to Engage in Timely Consultation.

The NRC will seek to provide timely notice to, and consult with, Tribal governments on NRC's 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 seek to establish early communications and begin consultation at the earliest permissible stage. The NRC will consult in good faith throughout the agency decision-making process, developing and maintaining effective communication, coordination, and cooperation with Indian Tribes. The NRC representative for consultations with Tribal officials or

representatives will be of an appropriate rank commensurate with the circumstances. 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.

5. The NRC Will Seek to Coordinate with Other Federal Agencies.

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

6. The NRC Will Seek to 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 encourages State-recognized Tribes to participate in its regulatory process, including opportunities related to rulemaking, hearings, licensing, decommissioning, and enforcement.

Designated Official and Tribal Liaisons

The Deputy Executive Director for Materials, Waste, Research, State, Tribal and Compliance Programs serves as the NRC's official point of contact for Tribal governments and the designated official for Tribal consultations.² The designated official shall assure that agency program personnel have considered the Tribal implications related to their responsibilities within

² In 2006, the Commission created the position of Deputy Executive Director for Materials, Waste, Research, State, Tribal and Compliance Programs (SECY-06-0125, "Proposed Reorganization of the Offices of Nuclear Material Safety and Safeguards and State and Tribal Programs" (ADAMS Accession No. ML061950452)). The position includes different responsibilities, including that of the Commission's primary point of contact for Indian Tribes.

the NRC's scope of jurisdiction and shall facilitate meaningful and timely consultation and coordination concerning the development, administration, and enforcement of NRC's regulatory actions that have substantial direct effects on one or more Indian Tribes.

The designated official shall be supported by staff who have functional responsibility to serve as intergovernmental liaisons to Indian Tribes, per Management Directive 5.1. These NRC Tribal liaisons will facilitate government-to-government consultation by encouraging Indian Tribes to coordinate with the appropriate office or personnel regarding programmatic inquiries and will facilitate the appropriate communication and exchange of information between Tribal officials and NRC staff. The Tribal liaisons shall also educate NRC staff about Tribal issues including cultural sensitivity and the Federal Trust Relationship.

VI. Procedural Requirements

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.).

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request protocol for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

Dated at Rockville, Maryland, this _____ day of _____, 2014.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,
Secretary of the Commission

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INTRODUCTION

The U.S. Nuclear Regulatory Commission (NRC) recognizes the unique relationship that the Federal government has with Federally-recognized Tribes. The NRC is committed to the development and implementation of agency policies and regulatory activities with Tribal implications. The “Tribal Protocol Manual” is intended to facilitate effective consultations and interactions between the NRC and Native American Tribes concerning activities within the scope of the NRC’s jurisdiction.

The Tribal Protocol Manual is a reference tool, produced from multiple sources, including interviews with NRC staff and management and other Federal agencies’ personnel and Tribal representatives experienced in working with Tribes. NRC management and staff can use this guide to develop and maintain government-to-government relationships with Tribal governments. This manual supplements working knowledge for NRC staff with Tribal outreach experience and provides practical guidance to NRC personnel who have had limited interactions with Native American Tribes.

In this manual, various names are used when describing Native American peoples, because there is no specifically established name to use when describing Native American people. As a point of reference, in a speech given November 5, 2009, before roughly 400 federally-recognized Tribes, President Obama addressed his audience using terms such as “Native Americans,” “First Americans,” “Tribal Nations,” and “Alaska Natives.”¹ The terminology “Indian Tribe” and “Tribal officials” were utilized in President Clinton’s November 6, 2000, Executive Order 13175.² The Department of the Interior, Bureau of Indian Affairs, uses the term “American Indian,” while the National Congress of American Indians prefers “Native American.” Accordingly, these terms will be used interchangeably throughout this manual.

Some Native American Tribes have a regulatory relationship with the NRC as licensees. This manual does not imply a regulatory relationship with license holding Native American Tribes different from other NRC licensees.

One important message to take away from this manual is that Tribes are unique governmental entities and are not extensions of State or local governments. Each federally-recognized Tribe is a domestic, dependent sovereign nation with its own customs, culture, concerns, interests and needs. NRC’s Tribal Protocol Manual is intended to assist NRC management and staff to recognize these distinctions and create a more open and productive working relationship with Native American Tribal governments.

¹ <http://www.whitehouse.gov/the-press-office/remarks-president-during-opening-Tribal-nations-conference-interactive-discussion-w>

² <http://www.whitehouse.gov/the-press-office/memorandum-Tribal-consultation-signed-president>

PREFACE



The NRC seeks to uphold its trust relationship with the Tribes and is committed to a government-to-government relationship with the Tribes.

The NRC exercises its trust relationship and fiduciary duty in the context of its authorizing statutes, including the Atomic Energy Act (AEA), and implements any fiduciary responsibility by assuring that Tribal members receive the same protections under implementing regulations that are available to other persons.

CHAPTER 1

Historical Perspective on Federal Government and Tribal Relations

SECTION 1.A

Shaping the Relationship between Tribes and the Federal Government

As described by the United States Supreme Court over a hundred years ago, “*the relationship between the United States and Indian Tribes is so unique, that nothing like it exists anywhere else in the world.*”³

The relationship that exists today between the Federal Government and Native American Tribes developed over hundreds of years. It is based on the sovereignty possessed by Tribes that pre-dates the formation of the United States, interactions between Tribes and the Europeans from the 15th and 16th centuries through the American Revolution and the adoption of the U.S. Constitution, Article I, Section 8, Clause 3. The adoption of the U.S. Constitution authorizes Congress to regulate commerce among foreign nations, the states and Indian tribes; and Article II, Section 2, Clause 2 authorizes the President, with consent of the Congress, to make treaties. These two constitutional provisions provided the Constitutional basis for the Federal-Tribal relationship that has been since shaped by subsequent treaties, laws, regulations, Executive Orders, administrative decisions, and federal court decisions — all of which comprise Federal Indian law.

Native American Tribes are regarded as sovereign nations; but because some powers are reserved exclusively to the Federal Government, Tribal sovereignty has limits. As a result, Federally-recognized Indian Tribes are considered as sovereign “nations within a nation,” or “domestic, dependent nations or governments.” The Federal government recognizes the right of Indian Tribes to self-government and to exercise inherent sovereign powers over their members and territories. Tribal officials expect to be treated as sovereign nation representatives when interacting with the federal government. A more detailed exploration and in-depth analysis of the “Duty of Protection” and the “Federal-Indian Trust Relationship” can be found in the “Legal Curriculum and Training Program of the Institute for the Development of Indian Law” located at: <http://www.worldcat.org/title/federal-indian-trust-relationship-duty-of-protection-legal-curriculum-and-training-program-of-the-institute-for-the-development-of-indian-law/oclc/005100430>.

SECTION 1.B

Executive Orders and Memoranda

Executive Orders and Presidential Memoranda, dating back to Richard Nixon’s “Special Message on Indian Affairs” in 1970, have addressed legislation and policies concerning the American Indian community.⁴ President Nixon’s 1970 speech condemned Tribal forced termination, endorsed Tribal self-determination, and changed the direction of Federal Tribal policy. President Nixon’s speech set the stage for the Executive Orders and Presidential Memoranda that would follow in years to come.

³ *Cherokee Nation v. Georgia*, 30 U.S.1, 16 (1831). Also *Morton v. Mancari*, 417 U.S. 535 (1974).

⁴ <http://www.epa.gov/tp/pdf/president-nixon70.pdf>. In 1970, President Nixon issued a “Special Message on Indian Affairs.” Subsequently, President Ronald Reagan, George H.W. Bush, William J. Clinton and George W. Bush issued policy statements regarding the Federal government’s relationship with Native American Tribes.

Executive Order 13175

In Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (Nov. 2000), President Clinton sought “. . . to establish regular and meaningful consultation and collaboration with Tribal officials in the development of Federal policies that have Tribal implications, to strengthen the United States government-to-government relationships with Indian Tribes, and to reduce the imposition of unfunded mandates upon Indian Tribes.” 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.” The NRC uses this definition in deciding when to establish regular and meaningful consultation and collaboration with Tribal officials.

Executive Order 13175, which superseded a May 1998 Executive Order of the same title, established policymaking criteria and consultation provisions for Federal departments and agencies. The Executive Order sets forth three fundamental principles to guide agencies when developing and implementing policies with 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, Executive Orders, and court decisions. Since the formation of the Union, the United States has recognized Indian tribes as domestic dependent nations under its protection. The Federal Government has enacted numerous statutes and promulgated numerous regulations that establish and define a Tribal trust relationship with Indian tribes.”
- “Our Nation, under the law of the United States, in accordance with treaties, statutes, Executive Orders, and judicial decisions, has recognized the right of Indian tribes to self-government. As domestic dependent nations, Indian tribes exercise 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 Indian 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.”

Because the NRC is an independent regulatory agency, the NRC is not required to implement the policies and procedures required in Executive Order 13175. The NRC, however, has stated that in exercising its regulatory authority, this agency, acts in a manner consistent with the fundamental precepts expressed in the Order.⁵ To that end, the Commission has adopted agency practices that ensure consultation and cooperation with Indian Tribal governments fully consistent with both President Clinton’s 1994 guidance and with Executive Order 13175.⁶

⁵ Letter from Karen D. Cyr, General Counsel, U.S. Nuclear Regulatory Commission; to Rosalyn Rettman, Esq., Acting General Counsel, Office of Management and Budget (January 26, 2001).

⁶ Presidential Memorandum for Heads of Executive Departments and Agencies, titled "Government to Government Relations with Native American Tribal Governments," April 29, 1994.

In a memorandum dated November 5, 2009, President Obama renewed the Federal Government's commitment to fulfilling the consultation requirements of Executive Order 13175. The Obama Administration holds annual Tribal summits at the White House.

SECTION 1.C

Historic Overview of the Federal and Tribal Relationship

The following chronology traces distinct eras — as viewed by some historians — of the relations between the United States and Native American Tribes. This section of the Tribal Protocol Manual is intended to inform the NRC staff and management of history from a Native American perspective.⁷ The eras provide a conceptual framework for understanding the dominant trends and large-scale shifts in the relationship between the Federal Government and the Tribes. These policies were often shaped and defined by the times in which they occurred. However, NRC staff should be aware that each Federally-recognized Tribe has its own unique history and experience with the Federal Government. In general, these eras are:

Treaties (1608-1870)

Removal (1830-1850)

Reservations (1850-1871)

Assimilation (1871-1927)

Reorganization (1928-1953)

Termination (1953-1968)

self-Determination (1968-present)

Treaties (1608-1870) A treaty is a formal, written contract that defines the terms of an agreement between two sovereign nations. Treaties were the legal instruments by which the British and colonial governments defined United States-Indian relations. Between 1607 and 1776, Indian Tribes entered into 175 treaties with the British and colonial governments. Article II, Section 2, Clause 2 of the United States Constitution authorizes the President, with the consent of Congress, to enter into treaties with Indian Tribes and thus govern the conduct of the Government in Indian relations. From 1787 to 1868, the U.S. government ratified 371 such treaties with Native American Tribes; no treaties have been ratified since 1868. The staff should be aware that many of the treaties with Tribes entered into or ratified by the U.S. Government have been abrogated or limited by Acts of Congress and federal case law. Litigation of the meaning, status and the specific Tribes and rights protected under treaties continues in the federal courts. Because of the complexity and changing nature of Native American law, the staff should contact the Office of the General Counsel (OGC) to obtain specific information on treaties or legal analyses of treaties. The staff should also recognize that State laws which pertain to persons and property residing within a State are generally preempted by federal Indian law, which is derived from the extensive body of treaties, Executive Orders, federal statutes, and federal case law.

While provisions in the treaties between the U.S. government and Indian Tribes varied widely, it was common to include a guarantee of peace, a clarification of boundaries and an understanding of any specific lands ceded to the Federal government, a guarantee of Indian hunting and fishing rights (sometimes on ceded lands), a statement that the Tribe recognized the authority or protection of the

⁷ Digest of American Indian Law: Cases and Chronology/H. Barry Holt, Gary Forrester, ISBN 0-08377-0684-x (1990).

U.S. government, and an agreement about trade regulation and travel of non-Indians in Indian territory. Many Tribal populations were required to move from their ancestral lands by the terms in a treaty. Tribal nations, the United States, the Congress, the federal courts, and states continue to grapple with questions relating to the nature of Indian property rights, the rights of individual Indians, and the power and jurisdiction of federal, tribal and state governments in Indian country. The breadth and complexity of treaties with Native American Tribes is too great to present in this manual, however, the staff is encouraged to consult other resources to obtain additional information. One source of primary documents on laws and treaties affecting Indian Tribes is the University of Oklahoma website on Indian Affairs: Laws and Treaties, compiled and edited by Charles J. Kappler at <http://digital.library.okstate.edu/kappler/> and [Indian Affairs: Laws and Treaties, Vol. II \(Treaties\) at http://digital.library.okstate.edu/kappler/Vol2/Toc.htm](http://digital.library.okstate.edu/kappler/Vol2/Toc.htm). See also the website Early Indian Treaties from the University of Nebraska at <http://earlytreaties.unl.edu/index.html>. Additional sources of information on treaties include the Bureau of Indian Affairs and Tribal websites; these are identified in Sections 3.D and 3.F.

One historically significant treaty is discussed here because it predates the U.S. Constitution and is generally considered the first official treaty between the United States and an Indian Tribe:

The Treaty with the Delaware Indians (1778). The treaty memorialized the parties' agreement to grant forgiveness, perpetuate friendship, acknowledge allegiance by the Delaware Nation during time of war, and provide free passage for United States troops through Delaware lands. The Federal government promised provision of "articles of clothing, utensils and implements of war" and to build a fort in Delaware Nation country "for the better security of the old men, women and children, whilst their warriors are engaged against the common enemy." The treaty recognized the Delaware Nation as a sovereign nation and guaranteed their territorial rights.

Removal (1830-1850) Congress passed the Indian Removal Act⁸ which allowed and funded the removal of members of the Chickasaw, Choctaw, Creek, Seminole and Cherokee Nations from their lands. This legislation "was to provide for an exchange of lands with the Indians residing in any of the States or territories, and for their removal west of the river Mississippi."⁹ President Andrew Jackson, an advocate of Indian Removal policy, oversaw this significant change in United States policy and law concerning the rights of Native Americans to practice their traditional ways of life in their homelands. The Act states, "it shall and may be lawful for the President to exchange any or all of such districts [west of the river Mississippi], so to be laid off and described, with any tribe or nation of Indians now residing within the limits of any of the states or territories, and with which the United States have existing treaties, for the whole or any part or portion of the territory claimed and occupied by such tribe or nation, within the bounds of any one or more of the states or territories, where the land claimed and occupied by the Indians, is owned by the United States, or the United States are bound to the state within which it lies *to extinguish the Indian claim thereto.*"¹⁰

The legislation in effect allowed the removal of Indian Tribes to western territories to allow non-Native American populations to move into the southeastern United States formerly occupied by those Tribes. The Choctaw Nation was the first to be removed in 1831 followed by the removal of the Seminole Nation in 1832, by the Creek Nation in 1834, the Chickasaw Nation in 1837, and finally removal of the

⁸ The full text of The Indian Removal Act is available at: <https://www.mtholyoke.edu/acad/intrel/removal.htm>

⁹ The Indian Removal Act of 1830.

¹⁰ *Id.* (Emphasis added).

Cherokee Nation in 1838. The Cherokee call their journey to Oklahoma the “Trail of Tears;” it has been estimated that approximately 4,000 of the 15,000 relocated Cherokee died en route to Oklahoma. Historians have recognized that many Native Americans suffered from exposure, disease, and starvation while en route to their western destinations.

Reservations (1850-1871) Reservations are parcels of land allocated by the Federal government to the Indian Tribes for their use and management as sovereign entities. Tribal reservations were created when Indian Tribes that were relocated from their traditional homelands were relocated again to a more western territory. The Indian Appropriations Act of 1851 (formally referred to as the Appropriation Bill for Indian Affairs) allocated monies to move Tribes onto newly created reservations. Contemporary legislators and policy makers described reservations as a means to protect the Indian Tribes from encroachment by white settlers moving westward. The very Tribes being protected were often those who had earlier been removed to the western territories in the 1830s. Indian Tribes were strongly opposed to this Federal policy that sought to impose an agrarian, geographically restricted way of life on Indian populations.

Assimilation (1871-1928) With the passage of the Dawes Act of 1887, the Federal government policy dramatically shifted from the allocation of communal (Tribal-owned) reservation lands to the assimilation of Native Americans into “mainstream” American society. This Act granted privately held landholdings to individual Indians, thus replacing the extensive communal Tribal holdings. Reservations were subdivided into smaller parcels to encourage Indians to engage in an agricultural economy (160 acres were allotted to families and 80 acres were allotted to individual persons). Other assimilation policies included educating Native American children in government boarding schools, which involved taking children from their families. The government run schools restricted the use of Native American languages and the practice of traditions, customs and religious ceremonies, and discouraged family visits. Tribes consider the Dawes Act to be one of the most destructive laws enacted by the U.S. government. The Indian Citizenship Act, granted U.S. citizenship to Native Americans in 1924. Although the 1924 Act granted federal citizenship rights to Native Americans, many did not achieve full citizenship and suffrage rights until 1948. According to a survey by the Department of Interior, seven states still refused to grant Indians voting rights as late as 1938.

At the request of the Secretary of the Interior, on June 12, 1926, the Meriam Commission was charged with investigating the affairs of Indians living on reservations in the United States. The Meriam Commission was financed by the Rockefeller Foundation, not by any government agency or agent, in an effort to maintain unbiased standards for the survey.¹¹ The investigation evaluated nearly all reservations and specifically examined the educational, industrial, social, and medical activities of the Bureau of Indian Affairs, as well as Indian property rights and economic conditions.¹² The Meriam Commission identified significant deficiencies in the educational, industrial, social, and medical systems on Indian reservations in 26 States. The Meriam Report of 1928, *The Problem of Indian Administration*, took aim at Indian boarding schools and recommended a shift in focus away from boarding facilities due to the substandard diet, education, and clothing they provided. “The survey staff finds itself obligated to say frankly and unequivocally that the provisions for the care of the Indian children in

¹¹ Parman, Donald L. and Lewis Meriam, "Lewis Meriam's Letters during the Survey of Indian Affairs 1926-1927 (Part 1)." *Arizona and the West* 24, 3 (Autumn, 1992), 253-280.

¹² *Id.*

boarding schools are grossly inadequate.”¹³ Although the general abandonment of boarding schools did not take place until the 1970s, the Meriam Report led to the implementation of new federal policies affecting Native Americans. The policies of the Assimilation era came under increasing attack with publication of the Meriam Report of 1928. The extensive *Meriam Report: The Problem of Indian Administration* detailing reservation conditions in the 1920s is available at <http://www.narf.org/nill/resources/meriam.htm>.

Reorganization (1928-1953) Congress passed the Indian Reorganization Act of 1934,¹⁴ also known as the Wheeler-Howard Act, in order to implement reforms recommended following the Meriam Report. The Reorganization Act was enacted to decrease the federal control of Indian affairs and to increase Indian self-government and responsibility. Significant parts of the law were the curtailment of the allotment of Tribal lands to individual Indians and restrictions on the alienation of allotted and Tribal lands. The Indian Reorganization Act provided economic development of Tribal lands and resources by establishing the rights of Tribes to establish businesses and other organizations, to establish a Tribal credit system, to home rule, and to provide vocational education and training to Tribes. The Indian Reorganization Act is considered by many Tribes and historians to be a cornerstone independence and self-determination by Native American Tribes.

Termination (1943-1968) The Termination era marks another major shift in federal policy concerning Native Americans. House Concurrent Resolution 108¹⁵ stated, “it is the policy of Congress, as rapidly as possible, to make the Indians within the territorial limits of the United States subject to the same laws and entitled to the same privileges and responsibilities as are applicable to other citizens of the United States, to end their status as wards of the United States, and to grant them all of the rights and prerogatives pertaining to American citizenship;”¹⁶ H. Con. Res. 108 states certain Indian Tribes and individual Indians “should be freed from Federal supervision and control and from all disabilities and limitations specially applicable to Indians: The Flathead Tribe of Montana, the Klamath Tribe of Oregon, the Menominee Tribe of Wisconsin, the Potawatomie Tribe of Kansas and Nebraska, and those members of the Chippewa Tribe who are on the Turtle Mountain Reservation, North Dakota.”¹⁷ This resolution served to “effectively terminate federal trust protection of American Indian reservation lands.”¹⁸ This resulted in the immediate withdrawal of all federal aid, services, and protection, as well as the end of reservations for affected Indian Tribes. Terminated Tribes became subject to State laws, their reservation lands could be sold to non-Indians, and the Act in effect, reversed many of the economic and educational reforms that had been implemented during Reorganization.

¹³ Meriam, Lewis, *The Problem of Indian Administration* at 11.

¹⁴ The full text of The Indian Reorganization Act is available at http://digital.library.okstate.edu/kappler/Vol5/html_files/v5p0378.html.

¹⁵ [U.S. House of Representatives Resolution 108](#), Indians, 83rd Congress, 1953. (U.S. Statutes at Large, 67: B122.) August 1, 1953 | [H. Con. Res. 108]. The H. Con. Res. 108 is available at http://digital.library.okstate.edu/kappler/Vol6/html_files/v6p0614.html.

¹⁶ *Id.* at 614.

¹⁷ *Id.*

¹⁸ Daly, [Heather Ponchetti](#), Fractured Relations at Home: The 1953 Termination Act's Effect on Tribal Relations throughout Southern California Indian Country, *The American Indian Quarterly*, Volume 33, Number 4, Fall 2009 pp. 427-439. See also, *Termination Policy 1953-1968*, Council of Indian Nations (http://www.nrcprograms.org/site/PageServer?pagename=cin_hist_terminationpolicy); *Menominee Termination and Restoration*, Milwaukee Public Museum (<http://www.mpm.edu/wirp/ICW-97.html>); These articles discuss the various affects on and views of the many Tribes subject to termination.

Self-Determination (1968-present) President Richard Nixon emphasized the importance of Tribal self-determination after pointing out the failure of the Termination policy in his Special Message on Indian Affairs speech.¹⁹ President Nixon condemned forced termination and recommended that U.S. policies concerning Indians should serve “to strengthen the Indian sense of autonomy without threatening his community.” The trust relationship between Native Americans and the United States government was reaffirmed and financial support for Tribes guaranteed.²⁰ The passage of the Indian Self-Determination and Education Assistance Act²¹ in 1975 was a milestone in U.S.-Indian relations. The Act acknowledged the right of Tribal governments to contract with the U.S. government and to determine how to spend appropriated Federal funds for the benefit of their Tribal members.²²

At the present time, Tribes actively assert their sovereign rights and have achieved greater political and economic independence through Tribal self-determination. Despite heightened Tribal and cultural awareness, Tribal assertiveness, and Federal Executive Orders and judicial rulings supporting these changes, many Tribes are discouraged by particular Federal policies or positions, a lack of adequate appropriations for Indian programs, and the perception of cultural insensitivity on the part of the Federal government.

SECTION 1.D

Federal Government’s Trust Responsibility to Tribes

The unique status of Tribes was explored in *Seminole Nation v. United States* (1942), where the Supreme Court explained that the Federal government is, “charged with moral obligations of the highest responsibility and trust.”²³ The Federal government has a trust responsibility to Federally-recognized Tribes, which applies to all executive departments and Federal agencies that deal with Native Americans, including the NRC. For Federal agencies that hold Tribal assets, the trust responsibility establishes fiduciary obligations to the Tribes, including duties to protect Tribal lands and cultural and natural resources for the benefit of Tribes and individual Tribal members/land owners.²⁴ In comparison, as an independent regulatory agency, the NRC exercises its fiduciary duty in the context of its authorizing statutes, including the Atomic Energy Act (AEA), and implements any fiduciary responsibility by assuring that Tribal members receive the same protections under implementing regulations that are available to other persons.

¹⁹ President Nixon, Special Message on Indian Affairs, July 8, 1970 is available at: <http://www.epa.gov/tp/pdf/president-nixon70.pdf>; see also Newcomb, Steven, Don't Treat Indian Nations as a Minority Group, Indian Country, dated 11/14/13 at <http://indiancountrytodaymedianetwork.com/2013/10/14/dont-let-tribes-be-turned-just-another-minority>.

²⁰ *Id.*

²¹ The Indian Self-Determination and Education Assistance Act is available at <http://tm12.community.uaf.edu/files/2010/09/Self-DeterminationAct-19751.pdf>; and its implementing regulations are available at <http://www.bia.gov/cs/groups/mywesp/documents/collection/idc017334.pdf>.

²² *The Native American Constitution and Law Digitization Project* is an excellent resource for identifying Tribal constitutions and codes for over 500 federally recognized tribes. The Project is a cooperative effort among the University of Oklahoma Law Center and the National Indian Law Library (NILL) of the Native American Rights Fund, and Native American tribes providing access to the Constitutions, Tribal Codes, and other legal documents. The website is <http://thorpe.ou.edu/>.

²³ *Seminole Nations v. United States* (1942) <http://supreme.justia.com/cases/federal/us/316/386/case.html>

²⁴ White House Press Release, June 26, 2013, establishing the White House Council on Native American Affairs, at <http://www.whitehouse.gov/the-press-office/2013/06/26/executive-order-establishing-white-house-council-native-american-affairs>. The Executive Order stated it was the policy of the federal government to protect tribal lands, environments, and natural resources, and promote respect for tribal cultures, as a means of promoting and sustaining prosperous and resilient tribal communities.

SECTION 1.E

Government-To-Government—What Does It Mean?

The Federal government has a unique legal and political relationship with Native American Tribes that arises from the authority of Congress to regulate interstate commerce under Article I of the Constitution and the power of the President to make treaties with the consent of Congress under Article II. This relationship has been defined and reinforced by treaties, Federal statutes, judicial decisions, and Executive Orders. The U.S. government recognizes Tribes as domestic sovereign nations, that is, the United States has acknowledged the inherent authority of Native American Tribes to govern themselves. Absent Congressional action, Tribes possess the right to self-government. The NRC exercises its regulatory authority in a manner consistent with the fundamental precepts expressed in Executive Order 13175, and supports meaningful consultation and collaboration with Tribal officials in the development of Federal policies that have Tribal implications. Chapter 4 of this Manual at Section 4.G defines and discusses the term Federally-recognized Tribes.

In establishing a government-to-government relationship with federally-recognized Tribal governments, the NRC acknowledges the status of Tribes as domestic dependent sovereign nations²⁵, as distinct from that of special interest groups, stakeholders, non-governmental organizations, or members of the general public. Additional guidance on consultation is contained in NRC Management Directive 5.1, “Intergovernmental Consultation” (ADAMS Accession No.: [ML041770442](#)). Individual NRC offices also provide guidance²⁶ on Tribal consultation conducted under Section 106 of the National Historic Preservation Act of 1966, as amended.

Chapter 2, Section 2.D describes how the NRC plans and conducts government-to-government meetings, as well as federal restrictions and requirements for funding these meetings.

SECTION 1.F

NRC’s Case-By-Case Approach to Interactions with Native American Tribes

The NRC’s regulatory actions with the potential to affect Tribal interests offer both the NRC and the Tribes an opportunity to initiate outreach and communication with one another. The NRC staff will identify and initiate dialogue with federally-recognized Tribal governments as part of NRC licensing activities and when exercising its regulatory authority in uranium recovery activities, reactor operations and license renewal, high-level and low-level radioactive waste storage and disposal concerns, and spent fuel transportation and disposal. The NRC conducts outreach in an effort to encourage Tribes to participate in the NRC regulatory process when agency policies have a substantial direct effect on one or more Indian Tribes. The staff provides Tribes with information detailing the Commission’s mission and regulatory authority, and identifies opportunities for Tribal involvement. The NRC staff maintains regular communications with Tribes and Tribal organizations that are interested in NRC activities. Of course, Tribal officials are encouraged to initiate communications with the staff on any NRC-regulated activities. The NRC invites Tribal input throughout its decision-making processes.

²⁵ The phrase “domestic dependent sovereign nations” to characterize Tribes comes from the *Cherokee Nation v. Georgia* case (*Cherokee Nation v. Georgia*, 30 U.S.1, 16 (1831)).

²⁶ See, for example, LIC-203, Revision 3, “Procedural Guidance for Preparing Categorical Exclusions, Environmental Assessments, and Considering Environmental Issues.” (ADAMS Accession No.: [ML12234A708](#))

The following are a few examples of the NRC's interactions with Tribal governments:

Power Reactor Inspections and License Renewal - Prairie Island Indian Community

The Prairie Island Indian Community (PIIC) reservation is located adjacent to the Prairie Island Nuclear Generating Plant (PINGP), Units 1 and 2, in Welch, Minnesota. In 1997, after the PIIC expressed interest in accompanying NRC inspectors on inspections, the Commission determined that Tribal representatives could observe NRC inspections at the plant. The PIIC observed NRC radiation protection inspections at PINGP later that year, and was the first Tribe authorized to observe NRC inspections.

In 2008, the NRC and the PIIC signed a Memorandum of Understanding (MOU)²⁷²⁷ granting the PIIC status as a Cooperating Agency for the purposes of preparing portions of the Supplemental Environmental Impact Statement for the proposed license renewal of the PINGP Units 1 and 2. The PIIC provided special expertise and assistance to the NRC staff in four areas: historic and archaeological resources, socioeconomics, land use, and environmental justice. This was a MOU dealing with the environmental review for a reactor license renewal.

In 2009, the President of the Prairie Island Indian Community Tribal Council participated, as an observer, in the Prairie Island Regional Lead License Renewal Program Inspection.

On October 3, 2012, the NRC signed another MOU²⁸²⁸ with the PIIC establishing a cooperating agency relationship between the NRC and the PIIC in preparing an Environmental Assessment for the license renewal of PINGP's independent spent fuel storage installation. The MOU also recognized the PIIC's special expertise and access to information regarding historic and archaeological resources, socioeconomics, land use, and environmental justice. In addition, PIIC continues to observe cask loading, participate in inspections, tours, meetings and other regulatory activities at the site.

Proposed Waste Repository – Timbisha Shoshone Nation

The NRC conducted Tribal outreach on the proposed Yucca Mountain high-level waste repository site in Nevada with the Timbisha Shoshone Nation from 2001-2008. The NRC hosted workshops for Native American Tribes with historical and cultural ties to Yucca Mountain area in 2001 and 2003. During these consultation activities, NRC staff learned the Timbisha Shoshone Nation had requested "affected status," as permitted by the Nuclear Waste Policy Act (NWPA). The U.S. Department of the Interior (DOI) has the authority to grant affected status to Affected Tribes. Affected status specifically affords Tribes rights to notice, participation, consultation, and financial assistance in proceedings on the proposed waste repository. The NRC provided information on NRC regulations and hearing procedures to DOI representatives and supported a timely decision on the Tribe request. The NRC staff visited the Timbisha Shoshone reservation in Death Valley, California in 2006. The NRC staff discussed the Tribe's affected status petition with DOI representatives at DOI headquarters in 2007. The Tribe first applied in 2001, and not having received an official determination on its request, the Tribe reapplied in 2006. In 2008 after DOI granted Timbisha Shoshone petition, NRC staff consulted with Timbisha Shoshone on participating in the NRC licensing and hearing process. The Timbisha Shoshone Tribe was admitted as a party to the Yucca Mountain hearings with eight admitted contentions in 2009.

²⁷ PIIC Memorandum of Understanding, (ADAMS [ML081630555](#)).

²⁸ PIIC Memorandum of Understanding, (ADAMS [ML12284A456](#)).

On March 3, 2010, the U.S. Department of Energy (DOE) filed a motion with the NRC Atomic Safety and Licensing Board (Board) seeking permission to withdraw its application for authorization to construct the repository at Yucca Mountain, <http://pbadupws.nrc.gov/docs/ML1006/ML100621397.pdf>. On September 30, 2011, in response to a Commission order, the Board issued a Memorandum and Order suspending the licensing proceeding. The NRC suspended its Tribal outreach for Yucca Mountain until further notice, <http://pbadupws.nrc.gov/docs/ML1127/ML11273A041.pdf>. In November 2013, the Commission directed the agency staff to complete work on the safety evaluation report on the Department of Energy's construction authorization application for the proposed Yucca Mountain nuclear waste repository. That action was in response to an August, 2013, decision by the U.S. Court of Appeals for the District of Columbia Circuit ordering the agency to continue its review of the Yucca Mountain application at least until existing funds appropriated for the review are expended, <http://pbadupws.nrc.gov/docs/ML1332/ML13322B228.pdf>.

Uranium Recovery and Legacy Waste Associated with Uranium Mining and Milling-located in New Mexico, Wyoming, Nebraska, and South Dakota

The NRC met with representatives from Navajo Nation, the Hopi Tribe, the Pueblo of Acoma, and the Pueblo of Laguna governments in New Mexico and Arizona in 2007 and 2008 to discuss regulatory issues related to uranium milling operations and environmental restoration.

Beginning in late 2007, the NRC staff, the U.S. Environmental Protection Agency, DOE, the Bureau of Indian Affairs, and the Indian Health Service participated in multiple briefings and roundtable discussions with the Navajo Nation, which resulted in the development of a 5-year plan to address legacy uranium mine and mill waste in Navajo Country. The plan addressed uranium contamination on Navajo lands and proposed solutions that were the subject of a Congressional committee hearing held by Congressman Henry A. Waxman on October 23, 2007. The NRC Staff also met face-to-face with senior Navajo government officials to discuss legacy concerns. The Navajo Nation Resources Committee, the Navajo Nation EPA, and the Navajo Nation Department of Justice were briefed on NRC responsibilities under the 5-year plan in April 2008.

In February and April of 2009, the NRC staff coordinated separate meetings with representatives of the Navajo Nation, Pueblo of Zuni, All Indian Pueblo Council, Pueblo of Laguna, and Pueblo of Acoma to discuss the licensing of uranium recovery facilities. At these meetings, NRC staff explained the licensing process, addressed related Native American concerns, and identified opportunities for Native American Tribal governments to participate in the licensing process.

The NRC initiated the National Historic Preservation Action (NHPA) Section 106 consultation with Tribes on the proposed Crow Butte License Renewal, Crow Butte North Trend, and Dewey Burdock in-situ uranium recovery projects in 2010. During the following 3 years, the NRC also initiated consultation with Tribes on the Ross, Marsland, and Three Crow projects. The NRC consults with more than 30 Tribes on these 6 uranium recovery licensing actions.

For each of these six projects, the NRC staff held face-to-face meetings to describe the proposed project, listened to Tribal comments and concerns, and facilitated identification of properties of cultural and religious significance to Tribes. Discussions were not limited to historic and cultural issues, but included other topics related to the proposed projects. The NRC staff also communicated with Tribal Historic Preservation Officers via phone, letters, and periodic status teleconferences. During 2012 and 2013,

interested consulting Tribes participated in field surveys to identify properties of cultural and religious significance at the six in-situ uranium recovery projects mentioned above.

Potential Small Nuclear Power Reactor Proposed for Galena, AK – Alaskan Tribes Represented by the Yukon River Inter-Tribal Watershed Council (YRITWC)

The City of Galena initiated discussions with Toshiba Corporation in 2003 on the possibility of building a nuclear power reactor. In February 2005, NRC staff met with representatives of the Yukon River Inter-Tribal Watershed Council (YRITWC). This organization represents 53 federally recognized Tribes in Alaska and 17 First Nations in Canada with tribal territories located in the Yukon River Watershed. The NRC staff explained how Tribal governments could communicate concerns on the proposed siting of a nuclear reactor in Galena, Alaska. After its first meeting, the NRC established the Tribal Consultative Team to address concerns related to the siting of the facility and maintained regular communications with the YRITWC, as appropriate. The YRITWC held its 2009 Bi-Annual Summit in August 2009, and the NRC staff spoke with the Executive Director of the YRITWC and with individual Tribal leaders about the status of the proposed Galena nuclear power reactor. The staff also discussed the NRC development of a Tribal policy statement and Tribal protocol manual.

CHAPTER 2

Guidance on Tribal Protocols and Interactions

SECTION 2.A

Potential Cultural Differences

Staff should recognize differences may exist between how NRC and Tribal representatives view issues of regulatory concern to the NRC. These differences reflect the ways different cultures prioritize and interact. The NRC staff should not consider interactions with Tribal government officials only from their own cultural perspective, staff should be sensitive to the cultural perspectives of all persons with whom they interrelate.

Cultural Differences *May* Exist In the Following Areas:

- Tribal representatives may seem to place less priority than federal employees do on the time-lines, schedules and agendas established by U.S. government agencies. The NRC staff approach to task management tends to be schedule-driven because of imminent deadlines, which may conflict with the expectations of Tribal representatives. Tribe governments have their own set of priorities and NRC staff needs to recognize important tribal concerns may require the immediate attention of leadership.
- Tribes often seek consensus in their decision-making and for that reason place importance on face-to-face interactions. Tribal officials and staff may request meetings in their offices so that Tribal members may be part of consensus decision-making. In planning where to hold meeting with Tribal representatives, staff should recognize that Tribal governments face the same budgetary constraints as the federal government and when possible, plan to hold meetings in locations that do not impose significant financial burden on Tribal budgets.
- Native Americans treat Tribal elders with great respect regardless of whether they hold elected office or official position. Often the opinions of Tribal elders, who are not part of the elected government, will be sought during Tribal consultation with the NRC staff.
- Since consensus, group harmony, and cohesiveness are important values among Indian Tribes, the NRC staff should seek out group views as well as the opinions of individuals. However, it is also essential for Tribal governments to present official viewpoints to the NRC.
- As is true of the overall American population, religious and spiritual beliefs vary widely among Native Americans. NRC staff should understand that the beliefs of all persons and groups should be discussed respectfully and protected from discussion in public forums. Where appropriate, the staff can explain that the confidentiality of information concerning beliefs or the location of religious or cultural properties will be protected from public disclosure to the extent allowed under relevant laws.
- Native religious and beliefs systems incorporate what Western religions identify as spiritual, as well as the relationship of humans to the natural environment. Native religious beliefs involve respect for and protection of the Earth and its resources.

Some Native American Tribes believe all living things are interconnected—the spiritual world and natural world are one. Threats to the environment are often viewed as direct threats to Tribal health, culture, and spiritual well-being. In addition to being a food source, plants and animals also convey

spiritual importance for Tribes. Accordingly, sites known for their abundance in gathering food or medicinal plants may often be historically and culturally significant.

Spirituality is also woven into Tribal lifestyles through ancestral teachings and beliefs that are handed down from generation to generation. In some Tribal cultures, celebrations, stories, songs, and dances teach skills as well as entertain. Additionally, some Tribes use subsistence activities, such as hunting, fishing, and foraging, to help teach the children respect for these activities and for the past. Because of cultural differences, NRC employees may misunderstand, or may be misunderstood by Tribal members. By practicing open communication, adaptability, and open mindedness in its interactions, NRC staff can develop positive working relationships with Tribal members.

SECTION 2.B

Tribal Consultation

NRC will seek to coordinate with other Federal agencies on regulatory actions with substantial direct effects on one or more Tribes. Consultation refers to NRC's goal to consult with Tribal governments at the earliest stage possible on NRC regulatory actions with Tribal implications. The consultation process may include, but is not limited to, providing for mutually agreed upon protocols, timely communication, coordination, cooperation, and collaboration to provide opportunity for appropriate Tribal officials or representatives to meet with NRC management or staff.

Consultation in this Manual contemplates beginning meaningful discussions with Tribal governments on agency actions or proposed projects that may have potential implications for Indian Tribes. To be meaningful and effective it is essential that consultation efforts begin early in agency consideration of an action or project. Consultation may take many forms and often includes:

- 1) establishing mutually agreed protocols for open and timely communication describing proposed agency actions,
- 2) establishing agency points of contact,
- 3) identifying Tribal government leadership and staff level points of contacts,
- 4) developing mutually agreeable schedules for meetings between Tribal officials and representatives and NRC management and staff,
- 5) providing opportunities for Tribes to raise concerns on the effects NRC licensing or regulatory activities may have on Tribal interests, and
- 6) inviting Tribal participation in the NHPA and NEPA process.

Designated representatives of the NRC have the authority to speak for the agency in a government-to-government exchange with designated Tribal leaders, officials, and staff. Through consultation, the NRC obtains Tribal views on proposed NRC actions and policies that have a direct substantial effect on one or more Indian tribes.

Staff should be cognizant that Tribal governments and leadership may take a more restrictive view of government-to-government consultation than the NRC staff. Tribal representatives may use "government-to-government consultation" to refer to interactions between Tribal leadership and NRC management and/or Commissioners. Government-to-government consultation includes interactions between Tribal staff and to NRC staff, as well as interactions between staff and higher-level officials. When representatives of the Federal government and Tribal governments interact on issues within the scope of their authority, the interaction may be considered "government-to-government." These

interactions may include information-sharing meetings, presentations, preliminary discussions, introductory briefings, information-gathering sessions, teleconferences, written correspondence, and telephone conversations between staff-level employees. All of these interactions are important to the NRC meeting its obligation to consult effectively and meaningfully with Tribal governments. When planning consultation activities with Tribes, staff should ensure that Tribal representatives understand the objectives of the consultation and know whether participants will be at the leadership or staff level.

SECTION 2.C

Federal Laws Protecting Tribal Historic and Cultural Resources

Many Federal laws require the Federal government to consult with Tribal governments. For example, the NRC licensing actions may require compliance with the National Environmental Policy Act, the National Historic Preservation Act, and the Native American Graves Protection and Repatriation Act. The NRC staff should check with their program offices for specific guidance on complying with these statutory provisions.

National Environmental Policy Act of 1969, As Amended

The National Environmental Policy Act (NEPA) (42 U.S.C. §4321 et seq.) (1969) establishes a broad national framework for protecting our environment. NEPA requires all federal agencies to 1) consider environmental impacts in their decision making, 2) inform the public of its decision, and 3) document the process by which the agency made its informed decision. NEPA also established the Council on Environmental Quality (CEQ), which publishes the Council on Environmental Quality Regulations for Implementing NEPA (40 CFR Parts 1500-1508). NEPA also requires each Federal agency to issue its own individual implementing regulations. The NRC meets its NEPA responsibilities by complying with the NRC regulatory requirements set forth in 10 CFR Part 51.

National Historic Preservation Act of 1966, As Amended

In the [National Historic Preservation Act of 1966](#) (NHPA)^[29], Congress established a comprehensive program to preserve the historical and cultural foundation of the nation as a living part of community life. Section 106 of the NHPA (16 U.S.C. Section 470f) is a crucial part of that program that requires federal agencies to consider the effects on historic properties of projects they carry out, assist, fund, permit, license, or approve. All federal agencies under the executive branch of the U.S. government are subject to the requirements of Section 106, including independent regulatory agencies. Complying with Section 106 is a federal agency responsibility and, while applicants may be asked to carry out some of the tasks for completing a Section 106 review, the federal agency remains responsible for all findings and determinations. Only when authorized by federal statute may non-federal entities be delegated legal responsibility for Section 106 compliance.

Section 106 requires federal agencies to consider the effects on historic properties of projects they carry out, assist, permit, license, or approve (undertakings). Federal agencies must also provide the Advisory

²⁹ <http://www.achp.gov/nhpa.html>. The National Historic Preservation Act was last amended in 2006 and a PDF version is available at the Advisory Council for Historic Preservation website listed above.

Council on Historic Preservation (ACHP) a reasonable opportunity to comment on such undertakings before the approval of the expenditure of any federal funds on the undertaking or before the issuance of any license. Agencies comply with Section 106 through the process in the implementing regulations, "Protection of Historic Properties" (36 CFR Part 800). The regulations implementing Section 106 can be found on the ACHP's Web site at <http://www.achp.gov/regs-rev04.pdf>. A fundamental goal of the Section 106 process is to ensure that federal agencies consult with interested parties to identify and evaluate historic properties, assess the effects of their undertakings on historic properties, and attempt to negotiate an outcome that will balance project needs and historic preservation values.

Section 106 review encourages, but does not mandate, a preservation outcome and recognizes that sometimes there is no way for a project to proceed without affecting historic properties. Based on the information gathered through the Section 106 process, a federal agency may make an informed decision to approve, change, or deny a project. Therefore, the outcome of Section 106 reviews can range from avoidance of historic properties to the acceptance of extensive adverse effects to historic properties. The Section 106 process ensures that a federal agency assumes responsibility for the consequences of its undertakings on historic properties.

Although the Section 106 regulations do not mandate a timeframe within which a federal agency must complete its review, the federal agency should plan for the time needed to consult to resolve adverse effects to historic properties at the beginning of the project planning process. Depending on the circumstances and the consultation process, a federal agency may conclude its Section 106 review with a finding of "no historic properties affected" or "no adverse effects to historic properties." Should the proposed undertaking pose adverse effects to historic properties, the agency must consult to attempt to reach an agreement on how to resolve those adverse effects. Consulting parties participate with the federal agency in the preparation of an agreement document, typically a Memorandum of Agreement (MOA) or Programmatic Agreement (PA), which establishes the agreed upon measures to resolve the adverse effect and the roles and responsibilities of the agency and the consulting parties. If the signatories cannot come to an agreement, the agency must request and consider ACHP comments. If an agreement is reached, the agency must implement all agreed upon measures set forth in the resulting MOA or PA.

The Native American Graves Protection and Repatriation Act (NAGPRA)

The Native American Graves Protection and Repatriation Act (NAGPRA) (Public Law 101-601; 25 U.S.C. 3001-3013) is a Federal law passed in 1990. NAGPRA provides a process for museums and Federal agencies to return certain Native American cultural items, human remains, funerary objects, sacred objects, or objects of cultural patrimony to lineal descendants, and culturally affiliated Indian tribes and Native Hawaiian organizations. NAGPRA includes provisions for unclaimed and culturally unidentifiable Native American cultural items, intentional and inadvertent discovery of Native American cultural items on Federal and tribal lands, and penalties for noncompliance and illegal trafficking. In addition, NAGPRA authorizes Federal grants to Indian tribes, Native Hawaiian organizations, and museums to assist with the documentation and repatriation of Native American cultural items, and establishes the Native American Graves Protection and Repatriation Review Committee to monitor the NAGPRA process and facilitate the resolution of disputes that may arise concerning repatriation under NAGPRA.

All Federal agencies are subject to NAGPRA. All public and private museums that have received Federal funds, other than the Smithsonian Institution, are subject to NAGPRA. (Repatriation by the Smithsonian Institution is governed by the National Museum of the American Indian Act of 1989, 20 U.S.C. 80q.)

The principle steps of the NAGPRA repatriation process include the following. Federal agencies and museums identifying cultural items in their collections that are subject to NAGPRA and preparing inventories and summaries of the items. Federal agencies and museums consulting with lineal descendants, Indian tribes, and Native Hawaiian organizations regarding the identification and cultural affiliation of the cultural items listed in their NAGPRA inventories and summaries. Federal agencies and museums must send notices to lineal descendants, Indian tribes, and Native Hawaiian organizations describing cultural items and lineal descendancy or cultural affiliation, and stating that the cultural items may be repatriated. The law requires the Secretary of the Interior to publish these notices in the *Federal Register*.

SECTION 2.D

Initiating Dialogue with Native American Tribes

The agency's initial written contact announcing a licensing application and inviting the participation of an Indian Tribe in consultation should be made by an NRC Division Director or Deputy Director. When initiating this written correspondence, the addressee should be the leader of the Tribal government. Copies of correspondence may be sent to the Tribal Historic Preservation Officer (THPO), State Historic Preservation Officer (SHPO), Tribal elders, and Tribal government officials, as appropriate. Subsequently, the NRC staff may send regular correspondence with Tribal officials or representatives, with copies sent to the Tribal leader, to keep leadership informed of consultation issues and progress.

Subsequent interactions with Tribal governments can be conducted by the NRC staff who contact and establish relationships with Tribal representatives who hold similar levels of authority. Communications can be via written correspondence, phone, or e-mails to the appropriate Tribal contact. The Staff-level personnel may also initiate requests on behalf of NRC management or in preparation for meetings with members of Tribal governments.

Contacts for National Historic Preservation Act Responsibilities

As part of their Section 106 responsibilities, Federal agencies must consult with any Indian tribe that attaches religious and cultural significance to historic properties that may be affected by the agency's undertakings. The NRC staff should also check with their program office to see if there is specific guidance for conducting the Section 106 process or evaluating historic and cultural resources through the NEPA environmental reviews.

Tribal Historic Preservation Officers (THPOs)

In 1992, the U.S. Congress adopted amendments to the National Historic Preservation Act (NHPA) which authorized Indian Tribes to take over the functions of SHPOs on Tribal lands and appoint a Tribal Historic Preservation Officer (THPO). The National Historic Preservation Act (P.L. 102-575) allows federally recognized Indian Tribes to take on more formal responsibility for the preservation of significant historic properties on Tribal lands. Specifically, NHPA Section 101(d)(2) allows Tribes to assume any or all of the functions of a State Historic Preservation Officer (SHPO) with respect to Tribal lands (ACHP 2013), provided that the Secretary of the Interior determines that the Tribal preservation program and the Tribe's plan that describes how the functions the Tribal preservation official proposes to assume will be carried out satisfy the requirements of Section 102(d)(2) of the NHPA (16 U.S.C. 470a). The decision to participate or not participate in the program rests with the Tribe.

As a formal participant in the National Historic Preservation program, a Tribe may assume official responsibility for a number of functions aimed at the preservation of significant historic properties. Those functions include identifying historic properties, and maintaining inventories of culturally significant properties, nominating properties to National and Tribal registers of historic places, conducting NHPA Section 106 reviews of Federal agency projects on Tribal lands, and conducting educational programs on the importance of preserving historic properties.

In cases where a Tribe has not assumed the responsibilities of the SHPO for purposes of Section 106 compliance on their Tribal lands, the Federal agency will consult with a designated representative of the Tribe, in addition to the SHPO, during review of projects occurring on, or affecting historic properties on, its Tribal lands. The Bureau of Indian Affairs and the National Park Service can provide initial contact information for these Tribes.³⁰

The NHPA regulations at 36 CFR Part 800, instruct Federal agencies to also consult with Indian Tribes that attach religious and cultural significance to historic properties that may be affected by an agency undertaking, regardless of their the location of the historic property. This consultation is referred to as Section 106 tribal consultation, (§ 800.2 (c) 2 ii (C)).

The following website lists current Tribal Historic Preservation Officers that are members of the National Association of Tribal Historic Preservation Officers (NATHPO) and is available at:
http://www.nathpo.org/THPO/state_list.htm.

State Historic Preservation Officers (SHPOs)

State Historic Preservation Officers (SHPOs) administer the national historic preservation program at the State level, review National Register of Historic Places nominations, maintain data on identified historic properties that have not been identified evaluated or nominated for placement on the National Register, and consult with Federal agencies during NHPA Section 106 reviews (ACHP 2013). SHPOs are designated by the governor of their respective State or territory.

Federal agencies seek the views of the appropriate SHPO when identifying historic properties, evaluating the eligibility of historic properties for the National Register, and assessing effects of an undertaking on historic properties. Agencies also consult with SHPOs when developing Memoranda of Agreement concerning Section 106 issues. The following website lists current listing of State Historic Preservation Officers that are members of the National Association Conference of State Historic Preservation Officers (NATHPONCSHPO) are available at: [National Conference of State Historic Preservation Officer's SHPO list](#).

SECTION 2.E

Generic Guide to Arranging Meetings with Tribal Representatives

Face-to-face meetings are an important part of government-to-government communications between Tribal governments and Federal agencies. Meetings may address issues of mutual concern, resolve issues

³⁰ The National Park Service maintains a list of Tribes that have assumed the responsibility of the SHPO for purposes of Section 106 compliance on Tribal lands at http://grants.cr.nps.gov/THPO_Review/index.cfm.

in dispute diffuse conflict and help avoid litigation. The NRC staff are encouraged to utilize the following information when planning and developing specific meeting strategies.

Pre-meeting Planning:

Staff members should conduct a pre-meeting before scheduling meetings with Tribal participants in order to:

- a) Identify the Tribal participant and their roles and positions within the Tribal community;
- b) Identify the issues and topics for discussion, review, evaluate the agency information to be presented, and determine whether the meeting is a high-level or staff level;
- c) Identify the desired outcomes for the meeting;
- d) Provide an opportunity for the Tribe to present a proposed meeting agenda in advance when planning meetings with Tribal leaders;
- e) Share the NRC proposed agenda with the Tribe; and
- f) Include suggestions from both the NRC and Tribal agendas in the final agenda.

Identifying and Planning:

- a) Identify whether the meeting will be an informal meeting between specified NRC staff and Tribal technical representatives or a formal meeting between the NRC senior staff and the Tribal head or Tribal Council.
- b) Identify those Tribal officials with whom the staff established relationships. Consider using various meeting formats, including presentations followed by discussions, listening sessions, small “breakout” groups, question and answer sessions, or a combination of formats.

Remember NRC meetings are often attended by Tribal representatives, as well as other parties with a vested interest in meeting topic(s), including:

- State or Local government representatives
- Representatives of local public interest groups
- Contractors and/or Consultants of federal agencies
- Other Federal Agency employees
- License Applicants and their consultants
- Other consulting Tribes

In advance of a meeting the staff should try to identify the particular concerns and expected outcomes of the many participants that will attend the meeting.

Meeting Logistics:

Select meeting sites or locations should be accessible to all parties from both a logistic and economic perspective.

Visual Aids:

Visual aids are very useful and greatly appreciated by many audiences. Maps, facility plans, and PowerPoint presentations can assist in illustrating NRC's verbal presentations. Present highly technical data to a technical audience. Remember that technical information properly explained in plain language is understood by non-technical audiences. Avoid the use of jargon and abbreviations for technical terms, government agencies, or NRC divisions. Take time to be sure the presentation addresses information of relevance and interest to your audience, and is being understood. Reserve time for questions from the audience.

Refreshments:

The NRC recognizes that providing food during gatherings or meetings may be customary in Native cultures, however, under Federal law, food and refreshments are generally considered to be personal expenses that cannot be purchased using Federal funds. The Commission must comply with Federal law pertaining to the provision of food and/or refreshments at meetings. Prior to offering food or refreshment at an NRC hosted meeting, NRC staff should seek guidance from the Office of the General Counsel.

Another point that should be considered is that the Standards of Ethical Conduct for Employees of the Executive Branch Regulations in 5 CFR Part 2635 allows NRC employees to accept modest items of food and refreshments that are not part of a meal. The NRC employees may also accept food and drink offered as part of a meal as long as it does not exceed twenty dollars (\$20.00) in value for an occasion and fifty dollars (\$50.00) for the entire year from a party. The NRC staff should inform Tribal government representatives of these restrictions when arranging meetings to avoid potentially awkward situations.

Press or Media Involvement:

When the NRC staff anticipates media presence at a scheduled meeting, the staff should work with the Office of Public Affairs to issue a press release in advance of the meeting or bring copies of an official press statement to the meeting. Additional media outreach resources are identified in Section 3.F "Tribal Media Contact Resources."

Meeting Outcomes or Conclusions:

When engaged in conducting meetings with Tribal representatives, the staff should:

- a) Exchange information and ideas with the appropriate Tribal attendees;
- b) Allow sufficient time for Tribe representatives to caucus among themselves. After the NRC and/or a license applicant make presentations, Tribal participants will often request the opportunity to

caucus to discuss the presentation and seek consensus on issues involved and on the next steps in the consultation;

- c) Solicit the views of Tribal attendees on the proposed NRC project or action; and
- d) Reach agreement on processes or procedures for maintaining communication and resolving disputes.

NRC staff should not assume that commitments or agreements reached during a meeting will be final. Even when the parties have reached consensus, Tribal representatives may need to brief Tribal leaders and obtain their concurrence before decisions are finalized.

When preparing notes or summaries of the meeting, staff should allow meeting participants the opportunity to review the NRC “draft” summary to ensure an accurate record of the views of all parties. If a meeting is transcribed, participants should be provided copies of the transcript and the opportunity to provide written corrections in the record.

When parties dispute or disagree on the substance of a meeting summary, the staff should seek clarification of the issues and work to resolve the differences. Tribes generally prefer face-to-face meeting, but understand that budgetary and time constraints affect all parties and recognize that telephone conversations, teleconferences, and webinars are also needed. Following telephonic consultation or webinars the staff should summarize the topics discussed, any commitments made, and identify outstanding issues.

Reminder—The staff should follow the procedures used in general agency correspondence — written correspondence sent to a Tribal representative is followed up with a telephone call to the Tribal contact, if a reply is not received within the expected time period.

SECTION 2.F

Meeting Etiquette

Clear and respectful communication is paramount in Tribal meetings. When people from different cultural backgrounds meet, misunderstandings can occur and are often manifested in differences in body language, response or lack of response to specific issues, cultural interpretations, and unexpressed expectations.

Potential communication challenges can be avoided by participating in cross-cultural awareness training, looking for possible personal bias and preconceived ideas, establishing professional relationships with Tribal representatives, and by being open to learning about Tribal customs. Tribal members place great value on listening and comments are held until all Tribal members have had an opportunity to speak. The NRC staff should be aware of this practice and provide time for persons to speak without interruption. Tribal elders members are particularly afforded great respect when speaking.

Generally, Tribal officials are comfortable participating in meetings conducted in English. At times, Tribal members, especially Tribal elders, may appreciate option of having an interpreter present at the meetings. The staff should contact FSME’s Intergovernmental Liaison Branch for assistance in arranging for translators.

Staff should follow the same protocols in official meetings with Tribal leaders, as they would with other government-leaders. The NRC Staff should address Tribal leaders by their official titles and names. Tribal leaders should be introduced before other participants and invited to address the meeting first.

Often a Tribal representative, elder or spiritual leader will open a meeting with a prayer, a song, or an invocation. The NRC Staff members may choose, but are not required to participate, in this custom. However, in such, staff should display respect for the Tribes' customs and beliefs in this tradition. Do not expect to convene a meeting immediately at the appointed time and recognize that the start may be delayed until all participants or highly-respected participants are assembled. Understand that the importance of working through an agenda may not be important to all participants.

Staff and management should limit any promises and commitments to those within their authority or the agency's statutory authority. Agency views, opinions, materials, and ideas must be presented honestly and openly, and clearly distinguished from personal viewpoints to avoid misunderstandings. Staff should limit discussions to subjects that fall within NRC statutory authority.

SECTION 2.G

Reservation Etiquette

Tribes differ significantly in their willingness to allow visitors on parts of the reservation away from official buildings or tourist attractions. It is advisable to inquire in advance about specific Tribal rules, attitudes, and customs before visiting parts of the reservation away from "public" areas. Above all, the reservation is the home of the Tribe and its people and the privacy of the people should be respected.

Some things to know about visiting reservations include:

- Do not assume that you are free to wander the reservation or ask Tribal members direct questions about their lives. This may be considered particularly rude behavior.
- Pointing is considered offensive in many cultures; some Tribes attach cultural, religious, and metaphysical significance to pointing that makes it inappropriate.
- NRC staff may find it useful to develop personal working relationships with members of the Tribe who can help with communication and protocol information.
- Photography may be restricted. Ask permission to photograph individuals, ceremonies, or meetings. Do not assume that it is permissible or appropriate to take photographs.
- When visiting cultural or sacred sites, ask the Tribes how you should behave at the site. Be respectful of all artifacts. Refrain from handling or otherwise disturbing these artifacts.

SECTION 2.H

Recommended Behaviors and Other Communication Considerations

- Learn to pronounce the name of a Tribe correctly and always use the proper pronunciation. Be conscious of your conduct and behave conservatively and considerately because judgments about character are based on one's actions, conduct, and responses. Opinions about credibility and integrity are often made during the first 5 minutes of conversation or introduction. Remember you are a representative of the Federal government and the NRC; your actions should demonstrate the importance the NRC places government-to-government relationship with Tribal nations.

- Avoid judgmental attitudes. Be flexible in conducting meetings and accept different views on decision-making.
- Keep your voice at a moderate or reasonable level. Speaking loudly may be interpreted as arrogant or disrespectful.
- Elders are highly respected in Tribal communities, whether or not they hold any official position. They are the repository for the continuity of Tribal culture and are often the source of considerable wisdom.
- Practice patience when speaking with and listening to Tribal elders and other Tribal representatives. Some Tribal members allow for greater pause time between speakers, even in their own language; a pause indicates the other person is considering what you said. Some Indian elders may respond by telling a story or an analogy to illustrate a point. A hurried follow-up question may disrupt their response to your initial questions. Therefore, if you are in a hurry, you may get no answer at all.
- Staff should give their undivided attention to the person who is speaking. If an issue is important enough to be discussed during consultation, it is important that all parties allot sufficient time to adequately discuss and ultimately resolve the issue. As is the case in all consultative and social situations, looking at your watch, yawning, walking out, raising your hand, or shaking your head while a Tribal elder is talking is considered rude behavior.
- Prolonged eye contact may be inappropriate, so be aware that making or holding eye contact may not be considered respectful behavior. While in meetings, maintaining direct eye contact for extended amounts of time with Tribal elders, leaders, and members is considered inappropriate in many Tribal cultures.
- When beginning an important discussion or when responding to questions by Tribal elders or officials, inappropriate laughter may be considered a lack of respect or seriousness or as belittling the subject matter.
- The NRC staff should dress respectfully as for any business meeting with elected officials or distinguished representatives of a government. Tribal leaders may expect professional, business attire to be worn by federal workers at meetings held in the Washington, D.C. area and at NRC headquarters. Casual attire may be appropriate at meetings held at locations outside of the metropolitan area, such as those held in states located in the West. Casual attire may also be appropriate for attendees who meet regularly with Tribal officials in informal settings.
- Tribal representatives may not be familiar with NRC terms, technical vocabulary, acronyms, vernacular, and standard operating procedures. The NRC staff should consider the prior experience, involvement, education, and training of the Tribe as related to the technical or licensing matter at hand. The NRC staff should determine the need to provide explanations for technical and licensing terms. The NRC Staff should be respectful and not underestimate the knowledge of Tribal officials.

In summary, strong relationships are built on trust and honesty. As representatives of a government agency, consider:

RESPECT...For Tribal interests, cultural diversity, customs, agendas.

RESPECT...For Tribal Council leaders as officials of another government.

LISTEN...Carefully; ask questions for clarification.

CONSIDER...What you say; do not promise what you may be unable to deliver.

COMMUNICATION...Is the key to successful relationships. Communication established early and often in the process results in more effective communication throughout the process.

STAFF FAMILIARIZATION...With Tribes' specific information, get smart, understand the Tribal history and current Tribal issues, concerns, and expertise of the Tribe or Tribes you may find yourself working with.

FACE-TO-FACE MEETINGS...Get to know the Tribe and its technical resource staff and council representatives. Meetings are the most effective method for achieving this important goal, followed by phone calls. Letters are essential, but can be bureaucratic and inefficient methods of communication.

FAMILIARITY AND CONTINUITY...Are essential for establishing and maintaining effective relationships.

VISIBILITY...Tribes and their concerns should be highlighted during introductions and at the meeting table.

ADAPTABILITY...Exhibit flexibility, sensitivity and empathy in Tribal relations.

PATIENCE...Take time to understand, communicate with, and work with the Tribes who have an interest in NRC activities.

CHAPTER3

NRC's Tribal Contacts: Reference Tools

SECTION 3.A

NRC's Tribal Liaison Point of Contact

The Deputy Executive Director for Materials, Waste, Research, State, Tribal and Compliance Programs serves as the Agency's designated official point of contact for Tribal governments and designated official for Tribal consultations. The Office of Federal and State Materials and Environmental Management Programs (FSME), Division of Intergovernmental Liaison and Rulemaking (DILR), Intergovernmental Liaison Branch (ILB), maintains the day-to-day experience and knowledge management necessary to perform Tribal liaison efforts. NRC staff and the public are encouraged to contact ILB with any questions regarding outreach and communication with Native American Tribal communities and Tribal representatives.

Tribal_outreach.resource@nrc.gov
(301)415-7278

Division of Intergovernmental Liaison & Rulemaking
Office of Federal and State Materials and
Environmental Management Programs

SECTION 3.B

NRC's Individual Program Office Descriptions

(NOTE to Graphics: Insert NRC Org Chart found at: <http://www.nrc.gov/about-nrc/organization/nrcorg.pdf>)

- Office of Nuclear Reactor Regulation (NRR)

NRR conducts a broad range of regulatory activities in the four primary program areas of rulemaking, licensing, oversight, and incident response for commercial nuclear power reactors, and research and test reactors to protect the public health, safety, and the environment.

<http://www.nrc.gov/about-nrc/organization/nrrfuncdesc.html>

- Office of New Reactors (NRO)

NRO provides safety oversight of the design, siting, licensing and construction of new commercial power reactors. NRO serves the public Interest by enabling the safe, secure, environmentally responsible use of nuclear power in meeting the Nation's future energy needs.

<http://www.nrc.gov/about-nrc/organization/nrofuncdesc.html>

- Office of Nuclear Regulatory Research (RES)

RES provides independent expertise and information for making timely regulatory judgments, anticipating problems of potential safety significance, and resolving safety issues. It helps develop technical regulations and standards and collects, analyzes, and disseminates information about the operational safety of commercial nuclear power plants and certain nuclear materials activities.

<http://www.nrc.gov/about-nrc/organization/resfuncdesc.html>

- Office of Nuclear Material Safety and Safeguards (NMSS)

NMSS regulates activities that provide for the safe and secure production of nuclear fuel used in commercial nuclear reactors; the safe storage, transportation, and disposal of high- and low-level radioactive waste and spent nuclear fuel; and the transportation of radioactive materials regulated under the Atomic Energy Act of 1954, as amended.

<http://www.nrc.gov/about-nrc/organization/nmssfuncdesc.html>

- Office of Federal and State Materials and Environmental Management (FSME)

FSME develops and oversees the regulatory framework for the safe and secure use of nuclear materials; medical, industrial, academic, and commercial applications; uranium recovery activities; low-level radioactive waste sites; and the decommissioning of previously operating nuclear facilities and power plants. It works with Federal agencies, States, and Tribal and local governments on regulatory matters. In addition, FSME conducts extensive environmental assessments in support of these regulatory functions.

<http://www.nrc.gov/about-nrc/organization/fsmefuncdesc.html> or <http://nrc-stp.ornl.gov/>

- Office of Nuclear Security and Incident Response (NSIR)

NSIR oversees agency security policy for nuclear facilities and users of radioactive material. It provides a safeguards and security interface with other Federal agencies and maintains the

agency's emergency preparedness and incident response program. <http://www.nrc.gov/about-nrc/organization/nsirfuncdesc.html>

- Office of Small Business and Civil Rights (SBCR)

SBCR supports the NRC mission in protecting people and the environment by enabling the agency to have a diverse and inclusive workforce, to advance equal employment opportunity for employees and applicants, to provide fair and impartial processing of discrimination complaints, to afford maximum practicable prime and subcontracting opportunities for small businesses, and to allow for meaningful and equal access to agency-conducted and financially-assisted programs and activities including partnerships with Minority Serving Institutions.

<http://www.nrc.gov/about-nrc/organization/sbcfuncdesc.html>

- Regional NRC Offices (RI, RII, RIII, RIV)
Regional Offices conduct inspection, enforcement (in conjunction with the Office of Enforcement), investigation, licensing, and emergency response programs for nuclear reactors, fuel facilities, and materials licensees. <http://www.nrc.gov/about-nrc/organization/nsirfuncdesc.html>

SECTION 3.C

NRC's Technical and Financial Assistance to Tribes

The NRC provides financial and technical assistance to Tribes and Tribal members through programs funded primarily by SBCR and the Office of the Chief Human Capital Officer. For example, the NRC's SBCR conducts outreach and provides technical assistance to Tribes to increase participation in the agency's contracting opportunities. The NRC also has an educational grants program, including a Minority Serving Institutions Program, which provides technical assistance to Tribal colleges and universities to increase participation by these institutions in opportunities funded by the NRC. The NRC public website provides access to ADAMS and other document libraries which contain technical information. The NRC website also provides information on how to participate in NRC activities and licensing actions (<http://www.nrc.gov/about-nrc/state-tribal/tpm.html>).

SECTION 3.D

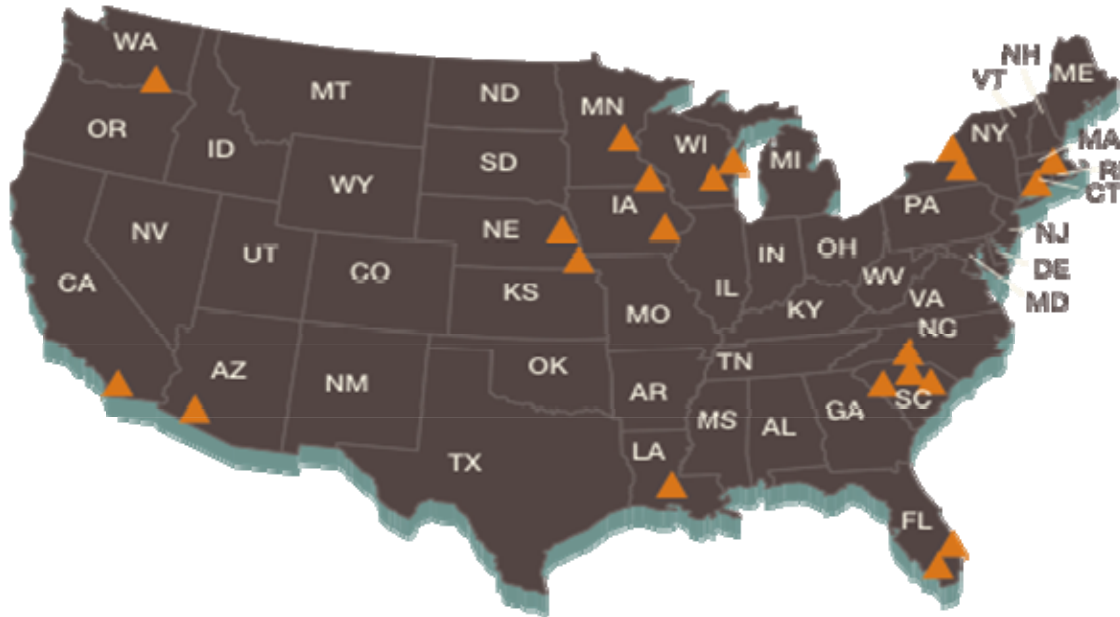
Federal Agency Tribal Website Links

1. U.S. Department of The Interior, Bureau Of Indian Affairs <http://www.bia.gov/>
2. U.S. Department of Homeland Security <http://www.dhs.gov/publication/dhs-Tribal-consultation-policy>
3. U.S. Department of Transportation
http://www.faa.gov/regulations_policies/orders_notices/index.cfm/go/document.information/documentID/13763
4. U.S. Department of Energy <http://energy.gov/congressional/congress/Tribal>
5. U.S. Federal Emergency Management Agency <http://www.fema.gov/Tribal>
6. U.S. Department of Health And Human Services <http://www.hhs.gov/iea/tribal/index.html>
7. U.S. Federal Energy Regulatory Commission www.ferc.gov/legal/maj-ord-reg/policy-statements.asp
8. U.S. Federal Communications Commission www.fcc.gov/indians
9. U.S. Environmental Protection Agency <http://www.epa.gov/tribal/>

SECTION 3.E

Native American Reservations and Trust Land within a 50-Mile Radius of a Nuclear Power Plant

(This map lists only those reservations and trust lands that fall within a 50-mile radius of a licensed nuclear reactor. The NRC anticipates that additional Tribes may have historical and cultural connections to these lands.) (Note to Graphics: Change "Grey Head" to "Gay Head" under Massachusetts.)



ARIZONA

Palo Verde
 Ah-Supai Indian Community
 Tohono O'odham
 Trust Land
 Gila River Reservation
 Maricopa County

CALIFORNIA

San Onofre
 Pechanga Reservation
 El Cajon Indian
 Pala Reservation
 Plumas & Yuba Rivers
 Historic Reservation
 San Jacinto Reservation
 Ukiah Reservation
 Colusa Reservation
 Siskiyou Reservation
 Santa Tulib
 Mesa Grande Reservation
 Barona Reservation

CONNECTICUT

Mililimbe
 Mohegan Reservation
 Mashantucket Pequot
 Reservation
 Naugatuck
 Reservation

FLORIDA

St. Lucie
 Okeechobee Reservation
 Seminole Tribe
 of Florida
 Fort Pierce Reservation
Turkey Point
 Reservation
 Hollywood Reservation
 of the Seminole Tribe
 of Florida

IOWA

Duane Arnold
 Sac & Fox Trust Land
 Sac & Fox Historic

LOUISIANA

River Bend
 Tunica-Bienville Reservation

MASSACHUSETTS

Plymouth
 Wampanoag
 Tribe of Gay Head
 Aquinnah
 Trust Land

MINNESOTA

Monticello
 Shakopee Community
 Shakopee Trust Land
 Mille Lacs Reservation
Franklin Island
 Trust Land Community
 Mille Lacs Trust Land
 Shakopee Community
 Shakopee Trust Land

NEBRASKA

Cooper
 Sac & Fox Trust Land
 Sac & Fox Reservation
 Kiowa
Fort Calhoun
 Heritage Trust Land
 Omaha Reservation
 Winnebago Reservation

NEW YORK

Pittsford
 Oneida Reservation
 Oneida Reservation
Three Mile Point
 Oneida Reservation
 Oneida Reservation

NORTH CAROLINA

Meigs
 Catawba Reservation
SOUTH CAROLINA
Columbia
 Catawba Reservation
Georgetown
 Eastern Cherokee
 Reservation
Sumter
 Catawba Reservation

WASHINGTON

Columbia
 Toxapa Reservation
 Toxapa Trust

WISCONSIN

Kewaunee
 Oneida Trust Land
 Oneida Reservation
Point Beach
 Oneida Trust Land
 Oneida Reservation

SECTION 3.F

Native American Media Resources

Native American Mainstream Media Outlets which Receive for NRC Press Releases from the Office of Public Affairs:

1. Native Voice One (<http://www.nv1.org/>)
2. Native American Times (<http://www.nativetimes.com/>)
3. Navajo Times (<http://www.navajotimes.com/>)
4. Indian Country Today (<http://www.indiancountrytodaymedianetwork.com/>)
5. Reznet News (<http://www.reznetnews.org/>)
6. Native American Calling (<http://www.nativeamericacalling.com/>)
7. National Native News (<http://www.nativenews.net/>)
8. Native American Public Telecommunications (<http://www.nativetelecom.org/>)
9. Indianz (<http://www.indianz.com/boardx/>)

Mainstream Media which Cover Native American News:

1. The Albuquerque Journal (<http://www.abqjournal.com/>)
2. Anchorage Daily News (<http://www.adn.com/>)
3. Arizona Capitol Times (Tucson) (<http://azcapitoltimes.com/>)
4. The Journal Record (Oklahoma City) (<http://journalrecord.com/>)
5. Los Angeles Times (<http://www.latimes.com/>)
6. The New York Times (<http://www.nytimes.com/>)
7. Phoenix New Times (<http://www.phoenixnewtimes.com/>)
8. San Antonio Express News (<http://www.mysanantonio.com/>)
9. San Diego Union Tribune (<http://www.utsandiego.com/>)
10. The Tulsa World (<http://www.tulsaworld.com/news/>)

In addition to the above, Native American radio stations, public telecommunication broadcasts and websites can be accessed via the following websites: <http://secure.nativepublicmedia.org> and <http://secure.nativepublicmedia.org/radio>.

SECTION 3.G

Tribal Contact Links:

To access the names and contact information of the federally-recognized Tribes, please utilize the following links:

- National Congress of American Indians Tribal Directory (<http://www.ncai.org/Tribal-directory>)
- Department of the Interior, Bureau of Indian Affairs, Tribal Leaders Directory (<http://www.bia.gov/cs/groups/xois/documents/text/idc002652.pdf>)

In addition, the NRC recommends that interested parties visit the Bureau of Indian Affairs or Census Bureau websites to locate the most current maps of Tribal reservations and trust lands.

- Another helpful resource tool is the Library of Congress-“*American Indian*” link: <http://www.loc.gov/law/help/guide/federal/indians.php>.

State and Tribal Phonebook - Internal NRC Tool:

The FSME “State and Tribal Phonebook” is an excellent source of up-to-date intergovernmental information. The State and Tribal Phonebook lists current contact information for State and Tribal government officials, including Governors, Governor-appointed State Liaison Officers, Radiation Control Program Directors, 10 CFR Part 71/Part 73 State Transportation contacts, Native American Tribal contacts, and State Emergency Management Directors. The NRC staff can access the State and Tribal Phonebook through the FSME internal website homepage. Under “Quick Links, on the right side of the page,” click on “State & Tribal Phonebook,” which is identified by a U.S. yellow map icon. Select the map icon to open the application, allowing for the selection of custom report parameters. The State and Tribal Phonebook is intended for internal use only and contains personal information which is prohibited from being disseminated to the public.

FSME manages the website, which is regularly updated and “helpdesk” assistance is available for the application. The “State and Tribal Phonebook” is accessible Agency-wide and allows users to for customize information requests. The Phonebook customization allows: 1) distribution of NRC advisories³¹ (for both FSME and NMSS); 2) maintenance of distribution contacts for NRC mailings; 3) automatic printing of mailing labels (including First Class and Federal Express addresses) to specific individuals; 4) export of e-mail addresses via Microsoft Outlook; and 5) various sorting capabilities (i.e., geographical regions, facility types, positions).

Contact:

For questions regarding the use of the “State and Tribal Phonebook,” generally or specifically as it pertains to Tribal Contacts, or assistance accessing the “State and Tribal Phonebook,” please contact Patricia McGrady-Finneran by telephone at (301) 415-2326, or by e-mail at Patricia.McGrady-Finneran@nrc.gov.

SECTION 3.H

Miscellaneous Tribal Information

The NRC maintains communication directly with federally recognized Tribes, as appropriate, of its regulatory and licensing processes. The Department of the Interior, Bureau of Indian Affairs website provides useful information on how federally recognized Tribes are defined under federal law and provides lists of Tribes meeting this criteria: <http://www.bia.gov/FAQs/index.htm>.

³¹ NUREG 1748, “*Environmental Review Guidance for Licensing Actions Associated with NMSS Programs*,” is found at: <http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1748/>.

How Is Federal Recognition Status Conferred?

The majority of federally-recognized Tribes received federal recognition status through treaties, acts of Congress, presidential Executive Orders or other federal administrative actions, or federal court decisions.

In 1978, the Department of the Interior issued Part 83 of Title 25 of the Code of Federal Regulations, Procedures for Establishing that an American Indian Group Exists as an Indian Tribe. The Federal Acknowledgment Process (FAP) is the Department of the Interior's administrative process by which petitioning Indian groups that meet certain criteria are "acknowledged" as Indian tribes and their members become eligible to receive services provided to members of federally recognized Indian tribes.

In 1994, Congress enacted Public Law 103-454, the Federally Recognized Indian Tribe List Act (108 Stat. 4791), which established three ways by which Indian groups may become federally-recognized:

**By Act of Congress;
By the administrative procedures under 25 CFR Part 83; or
By decision of a United States Court**

A Tribe whose relationship with the United States was expressly terminated by Congress may not use the Federal Acknowledgment Process to gain federal recognition as an Indian Tribe, because federal recognition of a "terminated" Tribe can only be restored by Congress. The Federally Recognized Indian Tribe List Act requires the Bureau of Indian Affairs within the Department of the Interior to publish a list of the federally-recognized Tribes in the Federal Register on an annual basis. The most current list was published May 6, 2013 (78 FR 26384) at:

<http://www.bia.gov/WhoWeAre/BIA/OIS/TribalGovernmentServices/TribalDirectory/index.htm>.

Requirements for a Tribe to Receive Federally-Recognized Tribe Status

1. The Petitioner has been identified as an American Indian entity on a substantially continuous basis since 1900;
2. A predominant portion of the petitioning group comprises a distinct community;
3. The petitioner has maintained political influence or authority over its membership;
4. The group has governing documents that include its membership criteria;
5. The petitioner's membership consists of individuals who descend from a historical Indian Tribe or from historical Indian Tribes, that combined and functioned as a single autonomous political entity;
6. The membership of the petitioning group is composed primarily of persons who are not members of any acknowledged North American Indian Tribe;
7. Neither the petitioner nor its members are the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship;

How To Contact Tribes That Are Not Federally-Recognized

NRC staff may contact Tribes that are not federally-recognized but are interested in a particular NRC regulatory activity. These Tribes can be contacted in the same manner as any other entity. These Tribes are not federally-recognized, but may be acknowledged by state law, and sometimes reside on state-recognized reservations. The NRC staff can use the websites listed below to assist in identifying Tribes that are not federally-recognized but have an interest in NRC regulatory activities.

http://500nations.com/Tribes/Tribes_State-by-State.asp

www.accessgenealogy.com/native

www.manataka.org

www.kstrom.net/isk/maps/Tribesnonrec.html

Governors Interstate Indian Council

The Governors Interstate Indian Council (GIIC) is made up of state Indian Affairs Offices and Commissions from across the country and has been in existence since 1949. The mission of GIIC is to promote and enhance government to government relations between the Tribes and states; respect and recognize the individual sovereignty of the Tribes and the states; support the preservation of traditional Indian culture, language and values; and encourage socioeconomic development aimed at tribal self-sufficiency.

Additional information about the organization's mission is available on the GIIC website:

<http://w1.paulbunyan.net/~giic/>. The website will be useful to NRC staff needing to locate contact information for State Indian Affairs Offices:

http://w1.paulbunyan.net/~giic/pages/office_directory.html.

State Indian Affairs Offices may be found on the website under "Office Directory". In addition, information on accessing State Government websites can be found on the GIIC website.

Major Tribal Culture Areas

A Culture Area is a region loosely defined by geography and climate comprised of Tribes that share cultural elements and environmental adaptations, such as, social and family organization, economic and political organization, religion and ceremonial practices, subsistence practices (hunter-gatherers, horticultural, pastoral, agricultural), language, settlement patterns and house types, material culture, and clothing and ornamentation. Eight major North American Tribal Culture Areas are recognized, although it is important to recognize that shared elements and adaptations are fluid.

1. Arctic and Subarctic
2. Eastern Woodlands
3. Southeast
4. Plains
5. Southwest
6. Plateau and Great Basin
7. Pacific Northwest
8. California

Types of Indian Lands

According to the U.S. Environmental Protection Agency, there are seven categories of Indian lands in the United States:

- 1. Reservations:** Lands set apart for the use of designated Tribes.
- 2. Trust Lands:** Lands held in trust by the U.S. government for Indians, usually a Tribe.
- 3. Checkerboard Lands:** Lands that are a combination of nonmember owned parcels and Tribal parcels, resulting in a checkerboard pattern.
- 4. Fee Lands:** Lands owned by non-Indians within the boundaries of a reservation.
- 5. Dependent Indian Community:** Lands set apart for Indian use under the superintendence of the U.S. government.
- 6. Allotments:** Lands held in trust by the U.S. government for individual members of a Tribe.
- 7. Ceded Territory:** Lands within a reservation or aboriginal area to which Tribal members retain specific rights, often the right to hunt, fish, and gather plants, despite ownership having been transferred from the Tribe, by a land sale or having been taken by the U.S. government.

To access specific information on Tribal reservations or federal trust lands, the NRC recommends interested parties visit the Bureau of Indian Affairs (BIA) at:

<http://www.bia.gov/SiteMap/index.htm> or U.S. Census websites at: <http://www.census.gov/geo/maps-data/maps/2010tribaltract.html>

The Most Populous Tribes

Native Americans make up 0.9% of the total U.S. Population. Tribes with the largest populations are listed below:

Tribe	Population
1. Cherokee	308,013
2. Navajo	285,476
3. Sioux	131,048
4. Chippewa	115,859
5. Choctaw	88,913
6. Apache	64,869
7. Pueblo	59,337
8. Iroquois	48,365
9. Creek	44,085
10. Blackfeet	23,583

Source: U.S. Census Bureau, Census 2010

Federal Agency – Tribal Consultation Analysis

In SECY-09-0180¹, Nuclear Regulatory Commission (NRC) staff examined Tribal Policies in place at other Federal agencies, and found that the extent of resources and staff supporting those policies varied, depending on the size of the agency as well as the legal authority and underlying mission of each agency. In November 2009, President Obama issued an Executive Memorandum on Tribal Consultation², underscoring the importance of President Clinton's Executive Order (EO) 13175 (2000)³, on the same topic. The 2009 Memorandum added new reporting requirements for agencies. As a result, many Federal agencies have either issued new or updated Tribal Consultation policies and implementation plans. Therefore, staff conducted another review of Federal agency policies as part of its response to COMWDM-12-0001⁴, to reflect current trends in policy and implementation.

Staff reviewed Tribal Policy Statements of Executive Departments, including subordinate agencies and independent agencies.⁵ The following is a summary of staff findings, including government-wide trends regarding policy and implementation resources, along with unique programs or noteworthy considerations found among Federal agencies. The discussion also provides a more detailed summary of Tribal policies in place at agencies that are either similar in mission or organizational structure to the NRC, or who have cooperative agreements and routinely interact with the Commission.

Government-Wide Trends

Staff's current analysis of Tribal Consultation policies found that policies and plans vary in substance and supporting resources, but include the following common themes: (1) enhancing government-to-government relations; (2) meeting trust responsibilities with Tribes; (3) respecting Tribal resources and properties of traditional cultural or religious significance; (4) recognizing rights of self-governance and determination; and (5) fully integrating the principle and practice of meaningful consultation and communication with Tribes. While some Tribal policy statements only identify broad principles without providing implementation details, others enumerate programmatic information. Subordinate agencies of some Executive Departments

¹ Nuclear Regulatory Commission (Dec. 11, 2009), *SECY-09-0180: NRC Interaction with Native American Tribes*.

² White House (Nov. 5, 2009). *Presidential Memorandum to Department Heads on Tribal Consultation*.

³ Executive Order 13175 (Nov. 6, 2000). *Consultation and Coordination with Indian Tribal Governments*.

⁴ Nuclear Regulatory Commission (May 22, 2012), *Staff Request Memorandum (SRM-COMWDM-12-0001) from Commission to the EDO*.

⁵ Fifteen Departments (which included many subordinate agencies) and three independent agencies' Tribal consultation policies were examined. (These Departments and independent agencies included: Departments of Agriculture, Commerce, Defense, Education, Health and Human Services, Homeland Security, Housing and Urban Development, Interior, Justice, Labor, State, Transportation, Veterans Affairs, the Federal Communications and Federal Energy Regulatory Commissions, the Environmental Protection Agency, the Small Business Administration, and the Advisory Council on Historic Preservation.) Staff examined their consultation and implementation plans, if available. Some departments/agencies' policies/plans are only in draft form or on restricted government websites. Staff also reviewed the White House's 2012 Tribal Communities Accomplishments Report (because OMB's raw data on Departments' Tribal policies/programs is not otherwise available, it is assumed that OMB's data is reflected in the White House's report) and the National Congress of American Indians' (NCAI's) December 2012 update on Implementation of EO 13175, and its 2012 Paper entitled "Consultation and High Energy Level Engagement: Strengthening our Nation-to-Nation Relationship."

have issued their own Tribal policies, mirroring their core principles of the broader agency wide-policy. The following table provides an overview of Federal agencies, along with information regarding their respective Tribal policy statements and implementation plans.

Table 1: Federal Agency Tribal Policies and Implementation Plans

AGENCY	POLICY	IMPLEMENTATION PLAN	POLICY LAST UPDATED
U.S. Department of Agriculture (USDA)	YES	YES	01/18/2013
U.S. Department of Commerce (DOC)	YES	YES	05/21/2013
U.S. Department of Defense (DOD)	YES	YES	2006
U.S. Department of Education (ED)	YES (updating)	YES	12/06/2001
U.S. Department of Health and Human Services (HHS)	YES	YES	12/24/2010
U.S. Department of Homeland Security (DHS)	YES	YES	05/11/2011
U.S. Department of Housing and Urban Development (HUD)	YES (updating)	YES (final release pending)	6/28/2001
U.S. Department of Interior (DOI)	YES	YES	12/01/2011
U.S. Department of Justice (DOJ)	FINAL DRAFT	YES	10/01/2012
U.S. Department of Labor (DOL)	FINAL DRAFT	YES	12/03/2012
U.S. Department of State (DOS)	YES	YES	02/04/2011
U.S. Department of Transportation (DOT)	YES	YES	03/2010
U.S. Department of Treasury (TREAS)	INTERNAL DRAFT	NO	07/23/2010
U.S. Department of Veteran Affairs (VA)	YES	YES	02/04/2011
Small Business Administration (SBA)	INTERNAL DRAFT	DRAFT	N/A
Advisory Council on Historic Preservation (ACHP)	YES	YES	05/04/2011
U.S. Department of Energy (DOE)	YES	DRAFT	01/2006
Environmental Protection Agency (EPA)	YES	YES	05/04/2011
Federal Energy Regulatory Commission (FERC)	YES	NO	07/23/2003
Federal Communications Commission (FCC)	YES	YES	6/23/2000
United States Army Corps of Engineers (USACE)	DRAFT	YES (submitted through DoD)	11/2012

Staff noted the varied and unique characteristics of Department and agency Tribal policies and plans.

Some agency Tribal policy statements lacked programmatic details, relying instead on supplemental consultation guidance documents to outline program goals. Other agency Tribal policies were more detailed. Some unique aspects of these policies include:

- Establishing an Indian Policy training program for personnel working with Tribes (DOE);
- Incorporating Tribal consultation and coordination requirements into Senior Executive Service training (USDA);
- Fostering contract and hiring preferences for Tribal members (DOT);
- Providing Tribes with information to bid on agency contracts and share information on agency programs, policies and procedures law (USACE);
- Outlining duties of Departmental designated officials (DOL);
- Outlining the steps that staff should take when consulting with Tribes (HHS, HUD, DOL and EPA);
- Working with Tribal governments to develop case studies and best practices in transportation planning and highway safety (DOT);
- Partnering with Tribes on studies, projects, programs and permitting procedures is supported and promoted where permissible under the law (USACE);
- Consulting with Tribes on Departmental and agency budget formulation, and holding an annual budget policy and consultation session to give Tribes the opportunity to present their budget recommendations and requests (HHS);
- Developing departmental metrics to measure performance and accountability of Tribal interactions (HHS and DOD); and
- Implementing the requirement to consult with Alaska Native Corporations in a manner as close as possible to consultations with federally-recognized Tribes in Alaska (DOC).

Section 106 Process

Much of the NRC's Tribal consultation occurs under Section 106 of the National Historic Preservation Act of 1966, as amended (NHPA). Staff found that most agency-wide Tribal policies and plans include limited or no discussion of the NHPA's Section 106 process. The Advisory Council on Historic Preservation's (ACHP) Tribal policy statement, however, provides detailed discussion of the Section 106 consultation process that is found within the agency's governing regulations. In comparison, the USACE's Tribal Policy Statement does not mention Section 106 within its Tribal consultation policy, but references the Native American Graves Protection and Repatriation Act (NAGPRA). NAGPRA establishes the rights of Indian Tribes and Native Hawaiian organizations to claim ownership of certain "cultural items," and requires Federal agencies to work with appropriate Tribal organization to repatriate such holdings.⁶ Staff review also found that guidance documents and other resources at a limited number of agencies such as the Bureau of Land Management (BLM) and the USACE, provided detailed information about the NHPA Section 106 consultation process.

Although the BLM does not have a Tribal policy statement, Section 106 is discussed in great detail within BLM's *Manual 8100 - Foundations for Managing Cultural Resources* which provides staff guidance for Tribal interaction. Notable Federal guidance documents providing detailed

⁶ The Secretary of the Interior's implementing regulations for NAGPRA can be found at 43 CFR Part 10. Detailed information regarding NAGPRA and its implementation can be found on the National Park Service Web site at: <http://www.nps.gov/nagpra/mandates/25usc3001etseq.htm> .

information on Section 106 include the March 2013 Council on Environmental Quality and ACHP: “Handbook for Integrating [the National Environmental Policy Act of 1969 (NEPA)] and Section 106.” Also noteworthy is ACHP’s Tribal consultation handbook entitled “Tribal Consultation in the Section 106 Review Process: A Handbook,” which is specific to the 106 process.

Reducing Regulatory Burden and Increasing Federal Partnerships

President Obama’s 2009 Executive Memorandum on Tribal Consultation not only required Federal agencies to develop Tribal Policies and implementation plans, but also encouraged them to reduce regulatory overlap that causes undue burden on Tribes. Subsequently, departments and agencies have sought to coordinate with Federal partners on activities that may have Tribal implications or require Tribal consultation and coordination, including activities related to: education, farming, health care, environmental protection, military training, commerce, and housing.

The White House’s 2012 Tribal Communities Accomplishments report outlined the following seven areas of Federal success: protecting the environment, investing in Tribal education, contributing to public safety, combatting violence against women, promoting healthcare, promoting economic development, and strengthening government-to-government relations. Federal cooperation on behalf of Tribal welfare was identified in each of the aforementioned areas.

In December 2012, the Departments of Defense, Interior, Agriculture and Energy and the ACHP entered into a five-year Memorandum of Understanding (MOU) regarding interagency coordination and collaboration for the protection of Indian Sacred sites. The MOU is effective until December 2017. Other Federal agencies may join the MOU at any time before its expiration.

The Administration continues to encourage multi-agency collaborations with Tribal governments to develop comprehensive policy for Indian Country. In June 2013, President Obama issued Executive Order 13647, “Establishing the White House Council on Native American Affairs.”⁷ The Order establishes the White House Council on Native American Affairs and outlines a national policy for engaging Tribes. The Order seeks engagement by Federal government agencies in true and lasting Nation-to-Nation relationships with Tribes that result in coordinated and effective efforts by an agency in carrying out its legal obligations and trust responsibilities.

Tribal Policy Implementation Resources

Office of Intergovernmental Affairs – In most cases, Tribal consultation responsibilities were assigned to the agency’s Office of Intergovernmental Affairs (OIA), with varying resources and dedicated Tribal staff. In many instances, Tribal liaisons were tasked with the responsibility for overseeing the consultation process. Agencies with Tribal liaisons include DHS, DOC, DOE, DOI, DOL, and DOT. Other agencies designated a Tribal official within OIA, who reports to the Assistant Secretary for Congressional Affairs and Tribal correspondence is treated as Congressional correspondences (DOE, DOL and DOT).

⁷ See 78 FR 39539. <http://www.gpo.gov/fdsys/pkg/FR-2013-07-01/pdf/2013-15942.pdf>.

HHS has established a Tribal office within OIA and assigned a Principal Advisor on Tribal Affairs to the Office of the Secretary. Tribal Affairs staff works with the Tribal representatives of its subordinate agencies and they coordinate Annual Tribal Consultation Sessions. HHS also established the Intradepartmental Council on Native American Affairs to coordinate activities related to Indian Country, which meets no less than twice a year. In 2010, HHS established the first cabinet level advisory committee composed of Tribal leaders from across the country, the Secretary’s Tribal Advisory Committee (STAC). STAC’s primary mission is to seek consensus, exchange views, share information, provide advice, provide recommendations, and facilitate interaction on intergovernmental responsibilities and the administration of HHS programs that involve applicable statutes, regulations and Executive Orders. STAC conducts forums and meetings, and holds conversations between Federal officials and elected Tribal leaders in their official capacity.

Separate Tribal Affairs Offices – Some Departments or agencies have established a designated office of Tribal Affairs. USDA and HUD are prominent examples. USDA’s Office of Tribal Relations concurs on clearance processes, reviews regulations, and provides guidance on Tribal Impact Statements (which are required by its regulations, much like USDA’s Civil Rights Statement). The office coordinates Tribal consultation within six subordinate agencies. HUD’s Office of Native American Programs leads Tribal consultation for the department with a staff of 170 at headquarters and six regional offices.

The 21 agencies reviewed by NRC staff have a designated staff member as a Tribal point of contact and 14 have Tribal offices, as presented in the table below.

Table 2: Agencies with Tribal Office or Staff

AGENCY	TRIBAL POC	TRIBAL OFFICE
USDA	YES	YES
DOC	YES	NO
DOD	YES	NO
ED	YES	YES
HHS	YES	YES
DHS	YES	NO
HUD	YES	YES
DOI	YES	YES
DOJ	YES	YES
DOL	YES	NO
DOS	YES	YES
DOT	YES	NO
TREAS	YES	NO
VA	YES	YES
SBA	YES	YES
ACHP	YES	YES
DOE	YES	YES
EPA	YES	YES
FERC	YES	NO
FCC	YES	YES
USACE	YES	YES

Tribal Coordination and Outreach, and Listening Sessions – All Departments and agencies, including those with draft policies/plans, coordinate with and outreach to Tribes. The Department of Commerce conducted two Tribal webinars during September 2012 to receive final input and comments on the proposed Tribal Consultation and Coordination Policy for the Department of Commerce.⁸ Other agencies experimented with webinars and other online technology to permit Tribal leaders to participate in consultations without incurring the travel costs and time commitments of in-person meetings. Although teleconferences and webinars may suffice for consultation, most Tribal liaisons at Departments and agencies expressed the opinion that face-to-face meetings with Tribes were essential. They suggest that agency budgets include annual funding for Tribal meetings, similar to funding meetings with foreign governments.

Agencies of Similar Function, Mission or Independent Nature to NRC

Staff closely examined the Tribal consultation policy statements at the following agencies because of their regulatory function, mission, independent nature, or working relationship with NRC: DOE, FERC, FCC, EPA, DOI/BLM, and DOD/USACE.

Department of Energy

DOE issued its first American Indian Policy in 1992, along with an order that established the responsibilities and roles of DOE management in carrying out its policy. In 1998, at the request of Indian Tribes, the American Indian Policy was revised. In 2000, DOE issued the American Indian and Alaska Natives Tribal Government Policy (as amended in 2006). This Policy was intended to ensure an effective implementation of a government-to-government relationship with American Indian and Alaska Native Tribal governments. The policy recognizes the Federal trust relationship to Tribes, as well as other Federal responsibilities. The policy demonstrates a commitment to: establishing government-to-government relations with Tribes, ensuring Indian Tribes are involved into the decision making process, and ensuring DOE's compliance with Federal laws and Executive Orders that assist in the preservation and protection of historic and cultural sites and religious practices.⁹ In 2008, DOE issued Order 144.1, "Department of Energy American Indian Tribal Government Interactions and Policy," as well as a framework on how to interact with Tribes.¹⁰

Tribal Official – The Deputy Assistant Secretary for the Office of Intergovernmental Affairs is the designated Tribal official for DOE. The Deputy Assistant Secretary carries out the decisions and resolutions of the Tribal Steering Committee and coordinates Tribal consultation with agency programmatic Tribal liaisons. The Deputy Assistant Secretary also submits an annual

⁸ The final *Tribal Consultation and Coordination Policy for the U.S. Department of Commerce* can be found online at: <http://www.commerce.gov/office-secretary/native-american-affairs> (and see 78 FR 33331). The U.S. Census Bureau, a subordinate agency, has a designated tribal liaison and has developed a *Handbook for Consultation with Federally-Recognized Indian Tribes*. Also, the National Oceanic and Atmospheric Administration (NOAA), a subordinate agency, designated a tribal liaison and is developing a handbook, *NOAA Procedures for Government-to-Government Consultation with Federally-Recognized Indian Tribes and Alaska Natives*.

⁹ The U.S. Department of Energy American Indian and Alaska Native Tribal Policy can be found online at: http://apps1.eere.energy.gov/tribalenergy/pdfs/doe_indian_policy2006.pdf

¹⁰ DOE Order 144.1 can be found online at: <https://www.directives.doe.gov/directives/0144.1-BOrder-AdmChg1/view>.

report detailing DOE's interactions with Tribal governments to the Office of Management and Budget (OMB).

Tribal Affairs Office – DOE's Tribal Affairs Office serves as the Department liaison to Tribal governments and organizations. DOE's Tribal Steering Committee organizes agency consultation for program offices. The Committee (1) coordinates on Tribal energy issues across affected DOE programmatic offices; (2) provides a formal mechanism to help DOE Tribal liaisons deal promptly with Tribal energy concerns, to identify opportunities for synergy across programmatic sectors within DOE, and to ensure that Tribal rights, including concerns regarding cultural resources management, are considered; (3) shares information among members and resolves problems affecting members; (4) makes recommendations directly to the Deputy Assistant Secretary on implementing Tribal energy policies, procedures, or requirements; (5) conducts regular conference calls or meetings with headquarters and Tribal government points of contact; and (6) reduces regulatory, statutory, and/or procedural impediments to the Department working directly with Tribes.

Tribal Program – The Energy Policy Act of 2005 (Public Law 109-58, Title V) authorized DOE to establish the Office of Indian Energy. The Office is responsible for energy planning, education, management, and programs that assist Tribes with energy development on Indian lands. The Office of Indian Energy Director is also authorized to provide grants, including formula grants or grants on a competitive basis to eligible Tribal entities, that has to date been implemented by DOE's Office of Energy Efficiency and Renewable Energy's Tribal Energy Program.

Resources – The Department offers a variety of resources for both Tribes and staff, including Web-based materials, publications, site-specific training and outreach. The management of nuclear waste falls within DOE's jurisdiction and involves government-to-government interaction with Tribes. The Office of Environmental Management (EM) oversees the cleanup of nuclear waste at sites and facilities throughout the country. EM frequently interacts with Tribal communities located near nuclear weapons production sites. The EM program includes Tribes in pertinent cleanup decisions through cooperative agreements, agreements-in-principle and memoranda-of-understanding. EM engages in several cooperative agreements and special initiatives with Tribes.¹¹

Outreach – The Department of Energy's Office of Indian Energy Policy and Programs held eight Tribal Roundtables from March 16, 2011, to April 14, 2011. The Udall Foundation's U.S. Institute for Environmental Conflict Resolution facilitated the roundtable discussions. The Senior Advisor for EM held two Tribal Policy Leader Dialogues in conjunction with meetings of the State and Tribal Government Working Group in 2012 to address key issues at EM sites.

Federal Energy Regulatory Commission

The Federal Energy Regulatory Commission (FERC) issued its Policy Statement on Consultation with Indian Tribes (FERC Policy Statement) in 2003, to facilitate Tribal involvement in areas within FERC's regulatory jurisdiction. The FERC Policy Statement stemmed from Tribal issues related to hydroelectric licensing. The FERC Policy Statement recognizes the unique relationship between the federal government and Indian tribes and acknowledges the

¹¹ Additional information regarding the DOE's Office of Environmental Management's tribal programs can be found online at: <http://www.em.doe.gov/tribalpages/initiatives.aspx>.

agency's trust responsibility to Indian Tribes. FERC established a Tribal Liaison position and announced principles for the hydroelectric licensing program in the policy. FERC follows a case-by-case approach in interacting with Tribes, much like NRC.

Tribal Liaison – FERC has one Tribal liaison responsible for educating FERC staff about Tribal governments and cultures, educating Tribes about FERC's various statutory functions and programs, working with Tribes during FERC proceedings, ensuring Tribal views are appropriately considered at every step of the process, serving as a guide for the Tribes to Commission processes, and meeting consultation requirements.

Federal Communications Commission

In June of 2000, the FCC adopted a policy statement on its government-to-government relationship with Indian Tribes. The FCC *Tribal Policy Statement* (FCC Policy Statement) recognizes Tribal sovereignty, federal trust principles, and the importance of FCC consultation with federally-recognized Tribes. It acknowledges the principles of Tribal self-governance and recognized the rights of Tribal governments to set their own communications priorities and goals for the welfare of their membership. The FCC's *Tribal Policy Statement* enumerated goals and principles and also guides the FCC's government-to-government relationship with Indian Tribes. The FCC has made progress to address the lack of communications services throughout Indian Country.

Office of Native Affairs and Policy – The FCC created its Office of Native Affairs and Policy in 2010, defining the Office's role and responsibilities as: (1) ensuring robust government-to-government consultation with Federally-recognized Tribal governments and other Native organizations; (2) working with Commissioners, Bureaus, and Offices within the FCC, as well as with other government agencies and private organizations, to develop and implement policies for assisting Native communities; and (3) ensuring that Native concerns and voices are considered in all relevant FCC proceedings and initiatives.

Tribal Agenda – The FCC created the Office of Native Affairs and Policy to more fully realize the FCC's long-standing commitment to the trust relationship between the federal government and Indian Tribes. FCC's comprehensive universal service reform has developed policies and new programs for Indian Tribes including Tribal-specific provisions in the Connect America Fund, and the Lifeline and Link Up programs. The extension of the established Tribal Priority rules is also intended to enable Indian Tribes to obtain full power commercial FM radio licenses more easily.

The Office of Native Affairs and Policy has made FCC's consultation and training seminar initiatives in Indian Country more responsive to stated needs and requests. In 2012, for example, the FCC hosted six training and consultation seminars on broadband and telecommunications on Tribal lands and in remote regions. As part of these seminars, the Office of Native Affairs and Policy also introduced its Native Learning Lab, which provides interactive, computer-based online tutorials to help people access FCC data and information and comment on FCC regulatory proposals.

In March of 2011, the FCC Chairman appointed Tribal and senior FCC staff to the FCC-Native Nations Broadband Task Force. The Task Force brings Native concerns to FCC rulemaking proceedings on broadband and promotes the development of broadband infrastructure on Tribal lands.

Resources – The FCC is currently revising its public Web site to provide an overview of Tribal initiatives.¹²

Outreach – The FCC conducts consultation and training, individual meetings, and listening sessions with Tribes on communications policy issues affecting Indian Country, including wire line siting, wireless telecommunications, and radio broadcast.

Environmental Protection Agency

The EPA established its Indian policy in 1984 and reaffirmed its commitment to Tribes on May 4, 2011, with release of its “*Policy for Consultation and Coordination with Tribes*.”¹³ The agency’s policy recognizes the Federal Trust responsibility and commits to protecting the environmental interests of Indian Tribes. The policy underscores the importance of working with Tribes on a government-to-government basis, and making policy and managing programs for Tribal reservations consistent with EPA standards. EPA’s comprehensive Tribal program maintains designated staff in both headquarters and regional offices.

NRC MOU – In 2002, NRC and EPA signed an MOU related to the decommissioning and decontamination of NRC-licensed sites which identifies the responsibilities of each agency. The MOU, although not exclusive to Tribal interactions, demonstrates the close working-relationship between NRC and EPA. Except for Section VI, which addresses corrective action under the Resource Conservation and Recovery Act (RCRA), this MOU is limited to the coordination between EPA, when acting under its Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) authority, and NRC, when a facility licensed by the NRC is undergoing decommissioning, or when a facility has completed decommissioning, and the NRC has terminated its license.

Tribal Program – The EPA established the American Indian Environmental Office to manage the EPA National Indian Program. The American Indian Environmental Office resides in the Office of International and Tribal Affairs (OITA). The Assistant Administrator for OITA is the designated Tribal Consultation Official for EPA. The Deputy Assistant Administrator for OITA executes the responsibilities of the Indian Program Policy Council (IPPC). The IPPC is comprised of Senior Executive Service level employees. The IPPC ensures EPA senior management is involved in identifying and resolving agency-wide Indian program policy issues and to implement tribal consultation at an early stage. Senior Executive Service membership of OITA is also responsible for submitting the annual report of interactions with Tribal governments to OMB.

The agency’s Tribal program provides grant funding for Tribal environmental programs and provides policy guidance and training to both EPA employees and Tribal governments on Tribal-related issues. The EPA also established the National Tribal Operations Committee (NTOC), which is composed of the EPA Administrator and senior-level employees and 19 elected Tribal leaders. The NTOC is a forum to discuss policy and resource matters related to Tribal capacity building, and environmental program development and implementation in Indian Country.

¹² The FCC’s Tribal homepage can be viewed at: www.fcc.gov/native.

¹³ The final EPA policy on consultation and coordination with Tribes can be found at <http://www.epa.gov/indian/pdf/cons-and-coord-with-indian-tribes-policy.pdf>.

Tribal Office – The 10 EPA Regions have designated Tribal Offices responsible for Tribal issues that arise within the region. Many of the regions have published practices and protocols specific to the region that govern interaction with Tribal governments. Regional Tribal Operations Committees exist to serve as regional equivalents of the NTOC. EPA has developed specific tribal partnership programs, for example the National EPA-Tribal Science Council, Tribal Water Council, and the National Tribal Air Council.

Tribal Resources – The EPA offers a wide array of resources related to Tribal issues. The agency developed the online American Indian Tribal Portal, offering information to Tribes regarding EPA contacts, environmental laws and regulations, Tribal organizations, maps, grants and training opportunities. Online and classroom training opportunities are available to EPA staff and Tribal members. To support Tribes consultation efforts, EPA developed the Tribal Consultation Opportunities Tracking System (TCOTS) as a one-stop resource for tribes. This system publicizes upcoming, current, and archived EPA Tribal consultations on its Tribal Portal webpage <http://tcots.epa.gov>.

In 2012, EPA launched the Tribal ecoAmbassadors program to develop local solutions to environmental issues and to expand research opportunities at Tribal Colleges and Universities (TCUs). Professors at TCUs work with students, Tribal governments, and EPA scientists to solve environmental and public health issues.

Outreach – According to EPA data, it has conducted Tribal consultation outreach 121 times from August 2011-2012 (including teleconference and in-person meetings). EPA solicits feedback from Tribes during consultations.

Bureau of Land Management

BLM has a Tribal consultation Web site and Tribal vision statement, similar to a Tribal Policy Statement.¹⁴ BLM defers to DOI's "Policy on Consultation with Indian Tribes."¹⁵

NRC MOU – NRC and BLM entered a cooperative agreement supporting common goals in furthering each agency's mission and responsibilities related to the development of uranium or thorium resources on public lands, including Federal mineral estates under the administration of the BLM. The cooperating agency relationship established through the MOU is governed by the applicable statutes, regulations, and policies of both agencies and is intended to provide an efficient means for both agencies to fulfill their NEPA requirements; to increase communication; to provide an avenue for the exchange of information for concurrent reviews; and to establish the respective agency roles and responsibilities.

BLM guidance – BLM guidance to its employees can be found in BLM manuals and handbooks that cover a variety of issues. Guidance related to BLM Tribal interactions is contained in

¹⁴ BLM's Tribal consultation page can be found at: <http://www.blm.gov/mt/st/en/prog/tribal.html> and its vision statement page can be found at:

http://www.blm.gov/pgdata/etc/medialib/blm/mt/blm_programs/tribal_consultation.Par.63063.File.dat/MT-DK%20Tribal%20Vision%20Statement.pdf.

¹⁵ DOI's "Policy on Consultation with Indian Tribes" can be found at:

<http://www.doi.gov/news/pressreleases/loader.cfm?csModule=security/getfile&pageid=269697>

multiple documents, including the 8100 manual, “The Foundations for Managing Cultural Resources,” and H-8120-1 handbook, “General Procedural Guidance for Native American Consultation.”¹⁶

BLM Programmatic Agreement (PA) - In 2012, the BLM Director, the Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers (SHPO) signed a national PA explicitly framed "to emphasize the common goal of planning for and managing historic properties under the BLM's jurisdiction or control in the public interest." Section 5.b. of the PA calls for cooperation and enhanced communication among State Historic Preservation Officers and BLM State offices as well as "a protocol specifying how they will operate and interact under this agreement." Each BLM State office operates under the PA (Alaska, Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, and Wyoming) and has a State-specific BLM-SHPO Protocol. The MOU seeks to improve interagency communication, facilitate sharing of special expertise and information, and coordinate the preparation of studies, reports, and environmental documents associated with NRC licensing actions and BLM regulation of public lands.

Tribal Office – The primary DOI point of contact for Tribal consultations lies within the Secretary of Interior’s Office of Intergovernmental Affairs. The Office engages Tribal representatives at each of its dependent agencies, including BLM.

Consultation Activity – BLM held 100 Tribal consultation sessions in 2011 and 2012 collectively.

United States Army Corps of Engineers

The USACE submitted its implementation plan to OMB through DoD on January 7, 2010, and is developing a second draft. The USACE’s program incorporates DoD and Department of the Army policies, along with its own guidance documents. The primary goals of USACE’s Tribal program are to consult with Tribes that may be affected by USACE projects or policies and to partner with Tribes on water resources projects. It has over 20 MOUs, MOAs, and PAs with Tribal governments.

USACE and NRC have a standing MOU on environmental reviews related to the issuance of authorizations to construct and operate nuclear power plants. The MOU was intended to streamline respective related regulatory processes of each agency. Cooperation between the USACE and the NRC ensures each agency’s review responsibilities under the NEPA and other related statutes are met in connection with the authorizations required to construct and operate nuclear power plants licensed by the NRC. The NRC licenses reactors according to its regulations such that the utilization of special nuclear material will be in accordance with the common defense and security and will provide adequate protection to the health and safety of the public. USACE administers a regulatory program to protect the Nation’s aquatic resources, including wetlands, under Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.¹⁷

¹⁶ Information related to BLM Manuals and Handbooks can be found on the BLM Web site at:

http://www.blm.gov/wo/st/en/prog/planning/planning_overview/guidance/manuals_and_handbooks.html .

¹⁷ Sections [check citations 10 and 404] may in certain instances require proposed nuclear power plants to submit more than one permit application.

Tribal Office/ Liaison – USACE has a senior Tribal liaison stationed at its headquarters (established in 2003) with over 70 division and regional liaisons stationed throughout the country.

Outreach – Since 2009, the USACE has held a significant number of ongoing consultation meetings along the Columbia River. The USACE has held national consultations on reissuance of nationwide permits in 2006 and 2011. The USACE’s largest regional consultations routinely take place along the Missouri River with all Lakota, Dakota and Nakota Nations, as well as upriver participating Tribes. Regional consultations on Missouri River flooding in Montana, North Dakota, South Dakota, Nebraska, and Kansas and on fires and flooding in New Mexico, Missouri, Kentucky and Tennessee have been held. In 2012, USACE logged more than 1400 Tribal consultations nationwide.

Conclusion

A comparative analysis of Tribal consultation policies and plans from several federal agencies shows that policies vary in substance and supporting resources. Differences stem primarily from the identified mission and priority of each agency. During the development of the NRC’s draft Tribal Policy Statement, the staff has considered policies and implementation strategies of other Federal agencies, particularly those agencies that have cooperating relationships with or similar missions to the NRC.