

Tribal Policy Statement

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

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

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

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

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

nature of that duty depends on the underlying substantive laws (i.e., treaties, statutes, agreements) creating the duty. The NRC exercises its Trust Responsibility in the context of its authorizing statutes including the Atomic Energy Act, the Energy Reorganization Act of 1974, the Nuclear Waste Policy Act of 1982, the Low-Level Radioactive Waste Policy Act of 1985, and the Uranium Mill Tailings Radiation Control Act of 1978, as amended. As an independent regulatory agency that does not hold in trust Tribal lands or assets or provide services to Federally recognized Tribes, the NRC fulfills its Trust Responsibility through implementation of the principles of the Tribal Policy Statement, by providing protections under its implementing regulations, and through recognition of additional obligations consistent with other applicable treaties and statutory authorities.

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

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

3. The NRC Will Conduct Outreach to Indian Tribes.

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

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

4. The NRC Will Engage in Timely Consultation.

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

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

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

5. *The NRC Will Coordinate with Other Federal Agencies.*

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

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

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

Designated Official and Tribal Liaisons

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

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

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