

Department of the Interior Departmental Manual

Effective Date:**Series:** Intergovernmental Relations**Part 512:** American Indian and Alaska Native Programs**Chapter 4:** Department of the Interior Policy on Consultation with Indian Tribes and Alaska Native Corporations**Originating Office:** Office of the Secretary

512 DM 4

4.1 **Purpose.** This chapter provides the requirements for Department of the Interior (DOI) government-to-government consultation between appropriate tribal officials and DOI officials. It expands and clarifies the Department's policy on consultation with Indian and Alaska Native Tribes and Alaska Native Claims Settlement Act of 1971 (ANCSA) Corporations and acknowledges the provisions for conducting consultation in compliance with Executive Order (EO) 13175 (Consultation and Coordination with Indian Tribal Governments), applicable statutes, and administrative actions.

4.2 **Scope.** The policy and requirements in this chapter apply to all DOI bureaus and offices. It complements, but does not supersede any existing laws, rules, statutes, or regulations that guide consultation processes with Indian Tribes.

4.3 **Definitions.**

A. **Indian Tribe or Tribe.** Any Indian or Alaska Native Tribe, band, nation, pueblo, village, 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.

B. **ANCSA Corporation.** Any Alaska Native village corporation, urban corporation, or regional corporation as defined in, or established pursuant to, the Alaska Native Claims Settlement Act, 43 U.S.C. § 1601 et seq.

C. **ANCSA Corporation Official or Designee.** An official or ANCSA member designated in writing by an ANCSA Corporation.

D. **Tribal Governance Officer (TGO).** An individual designated by the Department to carry out responsibilities described in this chapter.

E. Tribal Liaison Officer (TLO). One or more individuals officially designated by a bureau or office to carry out responsibilities described in this chapter.

F. Tribal Official. An elected or appointed Tribal leader or official designated in writing by an Indian Tribe to represent the Tribe in government-to-government consultations.

4.4 **Policy.** It is the policy of the Department to recognize and fulfill its legal obligations to identify, protect, and conserve the trust resources of federally recognized Indian tribes and tribal members, and consult with tribes on a government-to-government basis whenever plans or actions affect tribal trust resources, trust assets, or tribal health and safety. All bureaus and offices shall comply with and participate in the consultation process in a manner that demonstrates a meaningful commitment and ensures continuity in the process.

4.5 **Responsibilities.**

A. TGO. The TGO is appointed by the Secretary and is responsible for carrying out the responsibilities in this chapter including the following:

(1) Serving as the Secretary's representative when requested to do so in matters pertaining to consultation.

(2) Leading and managing the Department's consultation efforts to ensure effective government-to-government relationships with Indian Tribes and Alaska Native Corporations.

(3) Overseeing bureau and office compliance with the policy in this chapter, EO 13175, and other consultation requirements pertaining to government-to-government consultation.

(4) Implementing a Department-wide reporting system to ensure that consultation efforts are documented and properly reported.

B. Heads of Bureaus and Offices. Heads of bureaus and offices are responsible for:

(1) Designating in writing one or more TLOs.

(2) Ensuring that procedures are established to carry out consultation activities of their organizations.

(3) Ensuring compliance with the requirements in this chapter.

C. TLOs. TLOs are responsible for:

(1) Serving as the bureau/office principal point of contact for tribal consultation matters.

(2) Promoting and facilitating consultation and collaboration between Indian Tribes and their bureau/office.

(3) Reporting to the TGO annually of newly engaged consultation processes with any Indian tribe or Alaska Native corporation.

D. Department of the Interior University (DOIU). The DOIU in collaboration with bureaus/offices, tribal colleges and universities, and other entities with Indian expertise is responsible for developing and delivering training to facilitate implementation of this policy.

E. Office of Collaborative Action and Dispute Resolution is responsible for assisting in planning and facilitating an effective consultation process, negotiated rulemaking, or other collaborative approach to decision-making.

F. Joint Federal-Tribal Team (Team). The Joint Federal-Tribal Team is responsible for making recommendations on the implementation of this policy. The team members should include representatives from the Department and Indian Tribes. Members of the Team serve at the discretion of the Secretary. The Team will meet regularly to identify opportunities for improvements in the Department's consultation practices.

4.6 Alaska Native Corporation Settlement Act of 1971 (ANCSA) Consultation. When taking departmental action that has a substantial and direct effect on ANCSA Corporations, the Department will initiate consultation with ANCSA Corporations. To the extent that concerns expressed by Indian Tribes and ANCSA Corporations substantively differ, DOI officials shall give due consideration to the right of sovereignty and self-governance of federally recognized Indian Tribes.

4.7 Departmental Database. A single Departmental database will be maintained to manage the contact list for leadership of all Indian Tribes and ANCSA Corporations that are eligible for Federal consultation. The database should be an electronic and interactive system that allows real time updating of contacts and allows all bureau/office access. This database shall be maintained by the Bureau of Indian Affairs, Office of Indian Services.

4.8 Reports.

A. On an annual basis, bureaus/offices shall develop a report of the results of their efforts to promote consultation with Indian Tribes. The report is due to the TGO by December 31 of each year. Reporting is intended to be comprehensive and may include, but is not limited to, the scope, cost, and activities of the consultation efforts. The report should also highlight significant consultation efforts with Indian Tribes; include proposed plans, and recommendations.

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Effective Date:**Series:** Intergovernmental Relations**Part 512:** American Indian and Alaska Native Programs**Chapter 5:** Procedures for Consultation with Indian Tribes**Originating Office:** Office of the Secretary

512 DM 5

5.1 **Purpose.** This chapter provides the procedures and process for Department of the Interior (DOI) government to-government consultation between appropriate Tribal Officials and Departmental officials.

5.2 **Scope.** All DOI bureaus/offices shall use the requirements in this chapter for consultation with the Tribes.

5.3 **Authority.** Executive Order (EO) 13175 (Consultation and Coordination with Indian Tribal Governments).

5.4 **Consultation.**

A. Bureaus and offices must consult with recognized tribal government(s) when a determination is made of a possible impact on Indian trust resources, trust assets, or tribal health and safety. Bureaus and offices must be open and candid with tribal government(s) during consultations and incorporate tribal views in their decision-making processes. The consultations, whether initiated by the tribe or the Department, must be respectful of tribal sovereignty. Information received will be deemed confidential, unless otherwise provided by applicable law, regulation, or policy, if disclosure would negatively impact upon a trust resource or compromise the trustee's legal position in anticipation of/ or during administrative proceedings or litigation on behalf of the tribal government(s).

B. The basis of consultation is rooted in meaningful dialogue where viewpoints are shared, discussed, and analyzed for the benefit of all stakeholders. A Consultation session is, but is not limited to, in-person meetings, video-conferences, and teleconferences to discuss one specific issue. The consultation then may be expanded upon through subsequent correspondence after the initial consultation meeting. On a case-by-case basis, consultation may be held through a series of written correspondence with the tribal leadership, but written correspondence should only be used when other methods of dialogue are not feasible.

5.5 **Consultation Procedures.** Bureaus/offices will carry out the consultation stages described below for a departmental action with tribal implications.

A. Initial Planning Stage.

(1) The appropriate DOI officials within a bureau/office will consult with Indian Tribes as early as possible when considering a departmental action with tribal implications and provide Indian Tribes a meaningful opportunity to participate in the consultation process. Providing notification (the distribution of information from one or more departmental offices) to one or more tribes of a departmental action as a stand-alone effort is not consultation and does not constitute a government-to-government relationship. (The appropriate DOI officials are those individuals who are knowledgeable about the matters at hand, are authorized to speak for the Department, and exercise delegated authority in the disposition and implementation of a bureau/office action.)

(2) Notification of a consultation should include sufficient detail of the topic to be discussed to allow tribal leaders an opportunity to fully engage in the consultation. Adequate notice entails providing a description of the topic(s) to be discussed, a timeline of the process, and possible outcomes. The notice should also give tribal leaders the opportunity to provide feedback prior to the consultation, including time to request technical assistance and/or clarification on how the consultation process conforms to the requirements in this chapter.

(i) The bureau/office will ensure that notice is given at least 30-days prior to a scheduled consultation. If exceptional circumstances prevent notification within 30-days of the consultation, an explanation for the abbreviated notification will be provided in the invitation letter.

(ii) An Indian Tribe may request an extension for timelines.

(3) An Indian Tribe may request that the Department initiate consultation when the Indian Tribe believes that a bureau/office is considering a departmental action with tribal implications. The appropriate bureau/office TGO or appropriate representative will treat an official request for consultation in an expedited fashion and respond in writing that the Department has received the request, using the most expedient methods to communicate to the Indian Tribe.

B. Proposal Development Stage. The bureau/office will develop a process for the Proposal Development Stage that maximizes the opportunity for timely input by Indian Tribes and that is consistent with both tribal and bureau/office schedules. Examples of appropriate processes for the proposal development stage include, but are not limited to, Negotiated Rulemaking, Tribal Leader Task Force, a Series of Open Tribal Meetings, or Single Meetings.

(1) Bureaus/offices will solicit the views of affected Indian Tribes regarding the process timeline to consult on a departmental action with tribal implications. Bureaus/offices should work with Indian Tribes to structure a process, to the extent practicable, that considers

specific Indian Tribal structures, traditional needs, and schedules of the Indian Tribes. Bureaus/offices may proceed with the expectation that interested Indian Tribes will respond within a reasonable time period. If a bureau/office initiates consultation with a Tribe but does not receive a response, the bureau/office should make reasonable and periodic efforts to repeat the invitation and, when feasible, should allow an Indian Tribe to join an ongoing consultation. These efforts of engagement shall be appropriately documented.

(2) When the matter under consultation involves confidential or culturally sensitive information, the bureau/office will work with the Indian Tribe to develop a consultation process that addresses the sensitivity of the information to the extent permitted by Federal law. If litigation or legal requirements impact a bureau/office schedule for conducting consultation, the bureau/office shall explain the constraints to the Indian Tribe. If a determination is made that the Administrative Procedure Act or other Federal law or regulation expressly prohibits continued discussion at a specified point in the decision-making process, the Indian Tribes should be informed at the earliest opportunity in this stage of the process.

(3) Bureaus/offices will work with each other and with other Federal agencies, where appropriate, to coordinate consultations.

C. Implementation of Final Federal Action Stage. Bureaus/offices may consider implementing a post-consultation review process that invites tribal feedback or considers the need for training or technical assistance concerning the final Federal action. The post-consultation review process shall not limit the Department's deliberative process privilege regarding internal considerations or any other applicable privilege.

5.6 Consultation with Alaska Native Corporation Settlement Act of 1971 (ANCSA) Corporations. When taking departmental action that has a substantial direct effect on ANCSA Corporations, the Department will initiate consultation with ANCSA Corporations. The same consultation procedure described in paragraph 5.5 above shall be followed to engage Alaska Native communities.

5.7 Joint Federal-Tribal Consultation Team (Team). The Secretary will appoint six to eight tribal leaders to serve on the Team and advise Departmental officials on the consultation process. Each member's term of appointment may not exceed two years.

A. DOI officials should engage members of the team to determine what constitutes meaningful consultation to the Department's decision-making process. DOI officials will also coordinate with the team and discuss implementation of best practices and lessons learned during the consultation process for future departmental action.

B. The Team shall meet regularly to discuss the most recent quarter's Departmental consultation sessions with Indian tribes to identify areas where consultation with engaged tribal stakeholders impacted departmental action.

5.8 **Annual Report.** Each bureau/office TLO must collect administrative records of all its tribal consultations held each fiscal year and prepare a report to the TGO detailing its findings and include recommendations for improvement. Each bureau/office report is due to the TGO no later than December 31 of each year.

Recommendations for the Development of BOEM's Tribal Consultation Guidance

Prepared by the BOEM Tribal Consultation Policy Working Group

Introduction and Summary of Recommendations

On March 27, 2013, the Bureau of Ocean Energy Management Director called for the creation of a Tribal Consultation Policy Working Group (TWG) to develop recommendations for a BOEM Tribal Consultation Policy. The TWG includes staff representation from the following regions and program offices: Alaska OCS Region, Pacific OCS Region, Gulf of Mexico Region, Office of Strategic Resources, Office of Renewable Energy Programs, and the Office of Environmental Programs. The TWG convened for the first time December 17-19, 2013. The first day of the meeting was primarily focused on training, while the last two days were focused on discussing potential recommendations related to the consultation policy.

The TWG recommendations were circulated to BOEM regional and program office senior leadership on February 05, 2014, and a teleconference was held on February 18, 2014 to obtain feedback on these recommendations. The TWG met again on February 20, 2014 to discuss this feedback and decided to revise its recommendations; the recommendations for a Bureau-specific Tribal consultation policy were modified into recommendations for guidance on how to implement the existing DOI Tribal Consultation Policy (TCP). This summary, and the more detailed recommendations in the attachment, represents a consensus from the TWG.

The TWG recommends that the BOEM Tribal Consultation Guidance address the following areas:

- General Guidance;
- Tribal Consultation Training;
- Staffing Framework;
- System for Tracking and Sharing Tribal Consultation Efforts; and,
- Region and Program Office Tribal Consultation Plans.

Further information can be found in the attachment, including a recommended approach for Tribal outreach during the development of the BOEM Tribal Consultation Guidance. The TWG has deemed that Tribal outreach will be a critical element in developing effective Tribal consultation guidance that is built on communication, trust, and transparency. Tribal outreach is necessary so that the regions and program offices can develop tailored Tribal consultation plans that are consistent with the Bureau guidance, will work within the region and program office geographic scope and current work flows, and have the ability to accommodate Tribal preferences for how individual Tribes wish to be consulted.

In the development of these recommendations, the TWG reiterated and reinforced many of the principles or characteristics that had been articulated by BOEM's Regional and Program Directors before the initial TWG meeting, including the following guiding principles:

- The guidance document should be flexible to allow regions and program offices to develop Tribal consultation procedures but provide a level of consistency across BOEM;
- The guidance must contain and clearly reflect the baseline requirements contained within the DOI TCP;
- The guidance should clarify required steps/actions to conduct formal government-to-government consultation as described in the DOI TCP;
- The guidance should explain the relationship between formal government-to-government consultation with other meetings and other pertinent requirements (e.g., NEPA, NHPA); and,
- The guidance should specify regional and program office responsibilities and consultation requirements.

With the submission of these recommendations, the TWG has fulfilled its current charge. The TWG members have voiced their willingness to continue in an advisory capacity according to the Director's wishes, but they believe a more specific charter is needed to effectively guide the development of the BOEM Tribal Consultation Guidance.

Detailed TWG Recommendations

Develop BOEM Tribal Consultation Guidance

Description

The DOI Tribal Consultation Policy (DOI TCP, or the policy) provides the high-level consultation requirements and guidelines for the Department and its Bureaus and Offices. This policy was developed through a thorough and rigorous process that included a Federal and Tribal Working Group and multiple Tribal consultations, and also includes some flexibility for implementation at the Bureau level. The policy describes the Guiding Principles of Consultation; Accountability and Reporting; Training; and Consultation Guidelines. The recommended BOEM Tribal Consultation Guidance (guidance) will need to focus on describing who in the Bureau is responsible for carrying out Tribal consultation, what Bureau actions may have Tribal implications that may require consultation, when in the planning process consultation should occur, how that Tribal consultation will be carried out and documented, and identify areas where informal Tribal outreach and communication may enhance formal government-to-government consultation. This guidance will help ensure that BOEM is compliant with EO 13175, responsive to and in compliance with the overall DOI policy, and recognizes the Bureau's trust responsibility. It will establish clear authority for Tribal consultation throughout the Bureau and promote consistency across BOEM programs while preserving flexibility to accommodate regional and programmatic differences. Finally, when implemented, the guidance will help to promote more efficient communication with Tribes across BOEM and partner Bureaus and Federal agencies.

Suggested General Guidance

- Inclusion of a statement affirming that BOEM is adopting the DOI TCP.
- References to relevant Executive Orders, laws, and other departmental policies that may be related to consultation efforts.
- Description of the connection between the DOI TCP and other Executive Orders and Acts (e.g., NEPA, NHPA, Sacred Sites).
- Explanation of policy-critical elements (e.g., identification of Bureau officials; determining if a Bureau action has Tribal implications; defining early consultation; documenting Tribal engagement), and a description of ways the Bureau can implement them.
- Description of with whom BOEM consults on a government-to-government basis. Federally-recognized Tribes have a unique legal status that demands a government-to-government relationship. Other subsistence populations and cultural groups also need to be engaged, but the Bureau is not bound by the same formal consultation requirements. The detailed guidance will provide more information both about how to manage formal government-to-government consultation and engagement with federally-recognized Tribes and also how to coordinate information sharing with other indigenous communities.
- Distinction between consultation and communication and the important connection between these two actions for building Tribal relationships. By developing a relationship with Tribes, BOEM can

improve its communications, trust, and transparency. Ultimately, improving professional relationships can benefit all parties with potentially fewer FOIA activities and less litigation.

- Description of regional and program office responsibilities to be carried out in the development of regional tribal consultation plans.
- Inclusion of best practice examples describing what has worked for other parts of BOEM or other Federal agencies (e.g., Alaska Region experience with management of Tribal input on the Arctic Standards Rule, and in routine interactions and activities with the Tribes, ANCSA Corporations, and other groups that have unique or significant standing). Other examples will include some questions that may be helpful to ask at the first engagement and the appropriate visuals to share as part of the consultation effort and/or in the public meetings. These might include schematics, maps, and/or process flow charts that show where in the process consultation occurs, and may help orient Tribes to where their input is critical in a particular process.
- Discussion of how to avoid “meeting fatigue” by capitalizing on interagency coordination.
- Description of how the Bureau manages sensitive data, including traditional knowledge.

Tribal Consultation Training

Description

Tribal consultation training will raise awareness of consultation requirements and implementation approaches across the organization. The TWG recommends that the guidance specify two levels of required Tribal consultation training that addresses the needs of different staff levels depending on their role and level of engagement with Tribes: (1) BOEM Officials, the Tribal Liaison Officer (TLO), and Tribal liaison staff in programs who will interact most directly with Tribes; and (2) BOEM staff not directly involved in the Tribal consultation process but who can help identify consultation opportunities and support their success. A comprehensive training approach will ensure that the Bureau implements meaningful and consistent consultation processes that align with the DOI TCP and the Bureau’s guidance, and that Bureau officials and Tribal liaison staff will be able to fully understand and participate in Tribal consultation.

Suggested Contents

BOEM Officials, TLO, and Tribal Liaison Staff Training

- The TWG recommends that the guidance require all BOEM officials, the TLO, and Tribal liaison staff complete a comprehensive, two- or three-day training course to prepare staff for Tribal interactions and to be able to identify consultation opportunities. The training could be accomplished in one session or could be completed in a modular fashion. Additionally, this training should be required to be re-taken on a recurring basis. Acknowledging that courses on Tribal consultation are available and offered by other Federal agencies (e.g., Department of Defense) and third-party institutions, the TWG does not recommend that the Bureau develop its own *comprehensive* Tribal consultation training. Based on the recommended elements (see below), the TWG realizes that it may be advantageous to work with the DOI Office of Collaborative Action and Dispute Resolution (CADR) or

another third-party institution to develop a modular training for those BOEM-specific elements. It will be important that the Tribal consultation training include the following:

- o Federal-Tribal relations and key concepts such as trust responsibility and sovereignty;
- o Cross-cultural communication and negotiation skills;
- o A description of the Federal recognition process and how it changes over time;
- o Engagement with other indigenous people (e.g., State-recognized Tribes may become federally recognized during the engagement process);
- o Regional differences – BOEM’s relationships with different tribes in the different regions;
- o Description and discussion of the DOI TCP and BOEM Tribal Consultation Guidance;
- o Responsibilities of those staff that will be interacting with Tribes;
- o A summary of ongoing Tribal engagement within the Bureau;
- o Appropriate methods and tools for documenting Tribal consultation efforts and any associated reporting requirements, including the BOEM contribution to the DOI annual Tribal Consultation report; and,
- o Lessons on the costs to the Bureau if BOEM does not perform consultation and engagement in an appropriate manner.

General Tribal Awareness Training for BOEM Staff

- The TWG also recommends that the BOEM guidance require that BOEM staff not directly involved in the Tribal consultation process view a short (one hour) online course to raise awareness among all personnel about the DOI TCP, the special status of Tribes, and BOEM’s responsibilities for Tribal consultation and coordination. This effort would require that BOEM work with another entity (e.g., DOI CADR) to develop and deliver the content. It should include:
 - o High-level history of Tribal relations;
 - o Brief explanation of policy and consultation contacts/resources throughout the Bureau; and,
 - o Discussion on the value and importance of Tribal consultation.

Staffing Framework with Corresponding Performance Standards to Support Implementation

Background

A successful consultation program requires sufficient staffing equipped with appropriate knowledge, responsibilities, corresponding authorities and lines of communication. The DOI TCP describes some basic roles at the Department level and, to a limited extent, the Bureau level. The TWG recommends that guidance expand on this basic structure to establish a clear staffing framework for the Bureau’s Tribal consultation activities. The proposed structure acknowledges the importance of and advocates for increased communication and collaboration internally and externally among regions, program offices, and headquarters to promote efficiency and shared learning, while remaining cognizant of BOEM’s resources, capabilities, and regional differences.

Proposed Structure

- A Tribal Liaison Officer (TLO). This individual, as required by the DOI TCP, will serve as the point person for BOEM. The TWG recommends that this individual reside in or have a direct line of communication to the Director's Office. In addition to being a primary point of contact for Tribal consultation within the Bureau, this individual would also provide access to Bureau officials as needed for consultation efforts.
- Regional and Program Office Tribal Liaison Points of Contact and Staff. As selected by the region or program office, these individuals would be responsible for promoting effective consultation in their specific programs and regions, providing advice to the Regional or Program Directors on Tribal consultation matters, and compiling information about consultation efforts that is then provided to the TLO. The TWG recommends that the Tribal Liaison Point of Contact for a Region or Program Office be assigned within the Regional Director's or Program Chief's Office, recognizing that this person may need to rely on other staff within the Region or Program Office to fulfill their responsibilities.

System for Tracking and Sharing Tribal Consultation Efforts across BOEM

Background

The DOI TCP requires that DOI collect and share information about consultation efforts across the Department and its Bureaus. In addition, the TWG has observed that having a common, accessible body of knowledge about Tribal consultation efforts will promote efficiencies within the Bureau and avoid redundant efforts across the Bureau and with partner Federal agencies. A small-scale Tribal consultation database has already been developed for the Office of Renewable Energy Programs and the Alaska Region. The U.S. Fish and Wildlife Service also has a tracking system that is implemented through a Microsoft Access database accessed through Microsoft SharePoint.

Suggested Content

The TWG recommends that the consultation database include the following information:

- Contacts for coastally-affiliated Tribes that may be affected by or interested in BOEM's activities;
- Consultation efforts that are planned or under way, which can be easily organized by project, region, or other appropriate method;
- Name and contact information for Bureau and Tribal Officials representing BOEM and the Tribe during a consultation;
- Lessons learned and best practices identified during a specific consultation;
- Estimated costs of consultation efforts (travel, staff time, room rentals, etc.);
- Documentation of consultation attempts, including dates, who was contacted, and by what method; and,
- A reporting function that allows users to analyze, summarize, and obtain data related to BOEM consultation activities.

Regional and Program Office Tribal Consultation Plans

The regions and program offices will continue to be at the forefront of Tribal consultation in the Bureau. The TWG recommends that the guidance include language that directs regions and program offices to develop Tribal consultation plans that are consistent with the DOI TCP and the BOEM Tribal Consultation Guidance. The plans will describe the scope of regional or program office activities and will reflect how Tribes in the geographic scope of their activities wish to be consulted, if known. Ideally, these plans will be developed with Tribal input, either through the initial Tribal outreach efforts related to the development of the guidance or as a result of more focused outreach after the guidance is developed.

Proposed Approach for Involving Tribal Input in the Development of the BOEM Tribal Consultation Guidance

The TWG recommends that BOEM consider Tribal input while developing its guidance. Because the BOEM guidance will be based on the DOI TCP policy, it will already reflect Tribal input received during the policy development process. However, because BOEM is developing guidance tailored to reflect the Bureau's mission and scope of activities, the TWG strongly believes that focused consultation needs to occur during the guidance development process. It is important to note that the TWG does not advocate that any current efforts to engage Tribes should stop while the guidance is being developed.

The TWG proposes that the consultation process include the following steps:

1. Coordinate with BOEM's regions and program offices to develop letters that will be sent to Tribes that are currently within or have ancestral connections to the geographic areas that may be affected by the activities conducted by the region or program office. The letters will describe the effort to develop BOEM's Tribal Consultation Guidance based on the steps found in the DOI TCP and will focus on specific topics for which the region or program offices wish to receive additional clarification. This will most likely need to be a phased approach to take Tribal schedules into consideration, especially those engaged in seasonal subsistence activities.
2. Coordinate with the regions and program offices to identify those regional and national Tribal entities (e.g. United South & Eastern Tribes) to which BOEM can send information about the development of the guidance. This will ensure that the information is disseminated to a wider Tribal audience, and will illustrate that the Bureau, while focusing primarily on coastally-affected Tribes, is not precluding other Tribes from providing input into the development of the guidance.
3. Evaluate the comments received to decide which ones should be incorporated into the guidance and which comments should be reviewed within the context of the regional or program office Tribal consultation plans.
4. Develop the BOEM Tribal Consultation Guidance and release it for public comment.

Working Group Members

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Presidential Documents

Title 3—**Executive Order 13175 of November 6, 2000****The President****Consultation and Coordination With Indian Tribal Governments**

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order 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; it is hereby ordered as follows:

Section 1. Definitions. For purposes of this order:

(a) “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.

(b) “Indian tribe” means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

(c) “Agency” means any authority of the United States that is an “agency” under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).

(d) “Tribal officials” means elected or duly appointed officials of Indian tribal governments or authorized intertribal organizations.

Sec. 2. Fundamental Principles. In formulating or implementing policies that have tribal implications, agencies shall be guided by the following fundamental principles:

(a) 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 trust relationship with Indian tribes.

(b) 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.

(c) The United States recognizes the right of Indian tribes to self-government and supports tribal sovereignty and self-determination.

Sec. 3. Policymaking Criteria. In addition to adhering to the fundamental principles set forth in section 2, agencies shall adhere, to the extent permitted by law, to the following criteria when formulating and implementing policies that have tribal implications:

(a) Agencies shall respect Indian tribal self-government and sovereignty, honor tribal treaty and other rights, and strive to meet the responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments.

(b) With respect to Federal statutes and regulations administered by Indian tribal governments, the Federal Government shall grant Indian tribal governments the maximum administrative discretion possible.

(c) When undertaking to formulate and implement policies that have tribal implications, agencies shall:

(1) encourage Indian tribes to develop their own policies to achieve program objectives;

(2) where possible, defer to Indian tribes to establish standards; and

(3) in determining whether to establish Federal standards, consult with tribal officials as to the need for Federal standards and any alternatives that would limit the scope of Federal standards or otherwise preserve the prerogatives and authority of Indian tribes.

Sec. 4. *Special Requirements for Legislative Proposals.* Agencies shall not submit to the Congress legislation that would be inconsistent with the policy-making criteria in Section 3.

Sec. 5. *Consultation.* (a) Each agency shall have an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications. Within 30 days after the effective date of this order, the head of each agency shall designate an official with principal responsibility for the agency's implementation of this order. Within 60 days of the effective date of this order, the designated official shall submit to the Office of Management and Budget (OMB) a description of the agency's consultation process.

(b) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications, that imposes substantial direct compliance costs on Indian tribal governments, and that is not required by statute, unless:

(1) funds necessary to pay the direct costs incurred by the Indian tribal government or the tribe in complying with the regulation are provided by the Federal Government; or

(2) the agency, prior to the formal promulgation of the regulation,

(A) consulted with tribal officials early in the process of developing the proposed regulation;

(B) in a separately identified portion of the preamble to the regulation as it is to be issued in the **Federal Register**, provides to the Director of OMB a tribal summary impact statement, which consists of a description of the extent of the agency's prior consultation with tribal officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met; and

(C) makes available to the Director of OMB any written communications submitted to the agency by tribal officials.

(c) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications and that preempts tribal law unless the agency, prior to the formal promulgation of the regulation,

(1) consulted with tribal officials early in the process of developing the proposed regulation;

(2) in a separately identified portion of the preamble to the regulation as it is to be issued in the **Federal Register**, provides to the Director of OMB a tribal summary impact statement, which consists of a description of the extent of the agency's prior consultation with tribal officials, a summary of the nature of their concerns and the agency's position supporting the

need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met; and

(3) makes available to the Director of OMB any written communications submitted to the agency by tribal officials.

(d) On issues relating to tribal self-government, tribal trust resources, or Indian tribal treaty and other rights, each agency should explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking.

Sec. 6. *Increasing Flexibility for Indian Tribal Waivers.*

(a) Agencies shall review the processes under which Indian tribes apply for waivers of statutory and regulatory requirements and take appropriate steps to streamline those processes.

(b) Each agency shall, to the extent practicable and permitted by law, consider any application by an Indian tribe for a waiver of statutory or regulatory requirements in connection with any program administered by the agency with a general view toward increasing opportunities for utilizing flexible policy approaches at the Indian tribal level in cases in which the proposed waiver is consistent with the applicable Federal policy objectives and is otherwise appropriate.

(c) Each agency shall, to the extent practicable and permitted by law, render a decision upon a complete application for a waiver within 120 days of receipt of such application by the agency, or as otherwise provided by law or regulation. If the application for waiver is not granted, the agency shall provide the applicant with timely written notice of the decision and the reasons therefor.

(d) This section applies only to statutory or regulatory requirements that are discretionary and subject to waiver by the agency.

Sec. 7. *Accountability.*

(a) In transmitting any draft final regulation that has tribal implications to OMB pursuant to Executive Order 12866 of September 30, 1993, each agency shall include a certification from the official designated to ensure compliance with this order stating that the requirements of this order have been met in a meaningful and timely manner.

(b) In transmitting proposed legislation that has tribal implications to OMB, each agency shall include a certification from the official designated to ensure compliance with this order that all relevant requirements of this order have been met.

(c) Within 180 days after the effective date of this order the Director of OMB and the Assistant to the President for Intergovernmental Affairs shall confer with tribal officials to ensure that this order is being properly and effectively implemented.

Sec. 8. *Independent Agencies.* Independent regulatory agencies are encouraged to comply with the provisions of this order.

Sec. 9. *General Provisions.* (a) This order shall supplement but not supersede the requirements contained in Executive Order 12866 (Regulatory Planning and Review), Executive Order 12988 (Civil Justice Reform), OMB Circular A-19, and the Executive Memorandum of April 29, 1994, on Government-to-Government Relations with Native American Tribal Governments.

(b) This order shall complement the consultation and waiver provisions in sections 6 and 7 of Executive Order 13132 (Federalism).

(c) Executive Order 13084 (Consultation and Coordination with Indian Tribal Governments) is revoked at the time this order takes effect.

(d) This order shall be effective 60 days after the date of this order.

Sec. 10. *Judicial Review.* This order is intended only to improve the internal management of the executive branch, and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the United States, its agencies, or any person.

A handwritten signature in black ink that reads "William Clinton". The signature is written in a cursive style with a large, prominent "W" and "C".

THE WHITE HOUSE,
November 6, 2000.

[FR Doc. 00-29003
Filed 11-8-00; 8:45 am]
Billing code 3195-01-P

Appendix 5

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

November 5, 2009

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Tribal Consultation

The United States has a unique legal and political relationship with Indian tribal governments, established through and confirmed by the Constitution of the United States, treaties, statutes, executive orders, and judicial decisions. In recognition of that special relationship, pursuant to Executive Order 13175 of November 6, 2000, executive departments and agencies (agencies) are charged with engaging in regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, and are responsible for strengthening the government-to-government relationship between the United States and Indian tribes.

History has shown that failure to include the voices of tribal officials in formulating policy affecting their communities has all too often led to undesirable and, at times, devastating and tragic results. By contrast, meaningful dialogue between Federal officials and tribal officials has greatly improved Federal policy toward Indian tribes. Consultation is a critical ingredient of a sound and productive Federal-tribal relationship.

My Administration is committed to regular and meaningful consultation and collaboration with tribal officials in policy decisions that have tribal implications including, as an initial step, through complete and consistent implementation of Executive Order 13175. Accordingly, I hereby direct each agency head to submit to the Director of the Office of Management and Budget (OMB), within 90 days after the date of this memorandum, a detailed plan of actions the agency will take to implement the policies and directives of Executive Order 13175. This plan shall be developed after consultation by the agency with Indian tribes and tribal officials as defined in Executive Order 13175. I also direct each agency head to submit to the Director of the OMB, within 270 days after the date of this memorandum, and annually thereafter, a progress report on the status of each action included in its plan together with any proposed updates to its plan.

Each agency's plan and subsequent reports shall designate an appropriate official to coordinate implementation of the plan and preparation of progress reports required by this memorandum. The Assistant to the President for Domestic Policy and the Director of the OMB shall review agency plans and subsequent reports for consistency with the policies and directives of Executive Order 13175.

In addition, the Director of the OMB, in coordination with the Assistant to the President for Domestic Policy, shall submit to me, within 1 year from the date of this memorandum, a report on more (OVER) 2 the

implementation of Executive Order 13175 across the executive branch based on the review of agency plans and progress reports. Recommendations for improving the plans and making the tribal consultation process more effective, if any, should be included in this report.

The terms "Indian tribe," "tribal officials," and "policies that have tribal implications" as used in this memorandum are as defined in Executive Order 13175.

The Director of the OMB is hereby authorized and directed to publish this memorandum in the Federal Register.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person. Executive departments and agencies shall carry out the provisions of this memorandum to the extent permitted by law and consistent with their statutory and regulatory authorities and their enforcement mechanisms.

BARACK OBAMA



THE DIRECTOR

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

July 30, 2010

M-10-33

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES,
AND INDEPENDENT REGULATORY AGENCIES

FROM:

Peter R. Orszag
Director

A handwritten signature in black ink, appearing to read "P. Orszag", written over the printed name and title.

SUBJECT:

Guidance for Implementing E.O. 13175, "Consultation and
Coordination with Indian Tribal Governments"

On November 5, 2009, President Obama signed a Memorandum for the Heads of Executive Departments and Agencies on Tribal Consultation. In this Memorandum, the President emphasized his commitment to "regular and meaningful consultation and collaboration with tribal officials in policy decisions that have tribal implications including, as an initial step, through complete and consistent implementation of Executive Order 13175." Pursuant to Executive Order 13175, executive departments and agencies are charged with engaging in consultation and collaboration with Indian tribal governments; strengthening the government-to-government relationship between the United States and Indian tribes; and reducing the imposition of unfunded mandates upon Indian tribes.

Within the Office of Management and Budget, the Office of Information and Regulatory Affairs (OIRA) has primary responsibility for implementing Executive Order 13175 and the President's Memorandum. To assist in this charge, the OIRA Administrator, Cass R. Sunstein, has prepared the attached guidance.

Please circulate this memorandum (attached) to the appropriate officials within your agency for immediate attention.

Thank you.

Attachment



ADMINISTRATOR
OFFICE OF
INFORMATION AND
REGULATORY
AFFAIRS

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

July 30, 2010

**MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES,
AND INDEPENDENT REGULATORY AGENCIES**

FROM:

Cass R. Sunstein
Administrator

SUBJECT:

Guidance for Implementing E.O. 13175, "Consultation and
Coordination with Indian Tribal Governments"

On November 5, 2009, President Obama signed a Memorandum for the Heads of Executive Departments and Agencies on Tribal Consultation.¹ In this Memorandum, the President emphasized his commitment to regular and meaningful consultation and collaboration with tribal officials in Federal policy decisions that have tribal implications. Fulfillment of this commitment includes, as an initial step, complete and consistent implementation of Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments," issued by President Clinton on November 6, 2000.²

To ensure compliance with Executive Order 13175, President Obama instructed "each agency head to submit . . . a detailed plan of actions the agency will take to implement the policies and directives of [that] Executive Order." The President also instructed "each agency head to submit to the Director of the OMB, within 270 days after the date of this memorandum, and annually thereafter, a progress report on the status of each action included in its plan together with any proposed updates to its plan."

This guidance provides additional instruction to agencies on the preparation and submission of these progress reports. It also updates the relevant guidance issued in 2001 by the Office of Management and Budget Deputy Director for Management on what agencies should do to comply with Executive Order 13175, and how they should document that compliance.

¹ Published at 74 Fed. Reg. 57879 (November 9, 2009), and available at <http://www.gpo.gov/fdsys/pkg/DCPD-200900887/pdf/DCPD-200900887.pdf>

² Published at 65 Fed. Reg. 67249 (November 9, 2000).

Compliance with Executive Order 13175 and President Obama's November 5, 2009, Memorandum is critical to facilitate a meaningful dialogue between Federal officials and tribal officials. This dialogue is a continuing part of the Administration's commitments to transparency, participation, and collaboration, as emphasized by the President in his Memorandum on Transparency and Open Government, issued on January 21, 2009.³ In that Memorandum, the President emphasized that "[k]nowledge is widely dispersed in society, and public officials benefit from having access to that dispersed knowledge."

Following the President's Memorandum on Transparency and Open Government, the OMB issued the Open Government Directive, which, among other things, specifically instructs the Administrator of the Office of Information and Regulatory Affairs (OIRA) to "review existing OMB policies . . . to identify impediments to open government and to the use of new technologies and, where necessary, issue clarifying guidance and/or propose revisions to such policies, to promote greater openness in government."⁴

Consistent with Executive Order 13175, the President's Memorandum on Tribal Consultation, and his Memorandum on Transparency and Open Government, the purpose of this guidance is to help Federal agencies to comply with their obligations to provide meaningful consultation and collaboration with tribal officials, and to promote greater openness in government.

1. When did Executive Order 13175 take effect?

Executive Order 13175 ("the Order") became effective on January 5, 2001 (Sec. 9(d)).

2. What agencies does it cover?

E.O. 13175 binds all Federal agencies, except for independent regulatory agencies (Sec. 1(c)). It encourages independent regulatory agencies to comply voluntarily with its provisions (Sec. 8). The Order adopts definitions of "agency" and "independent regulatory agency" used by the Paperwork Reduction Act of 1995.

3. What is the role of an agency tribal consultation official and which agencies must have them?

³ President Barack Obama, Memorandum on Transparency and Open Government (Jan. 21, 2009), *available at* <http://www.gpoaccess.gov/presdocs/2009/DCPD200900010.pdf>

⁴ OMB Memorandum M-10-06, *Open Government Directive* (Dec. 8, 2009), *available at* http://www.whitehouse.gov/omb/assets/memoranda_2010/m10-06.pdf

Pursuant to E.O. 13175, each agency and department must have a tribal consultation official (Section 5(a)).⁵ Each tribal consultation official must:

- assure that agency program personnel have considered the fundamental principles and policymaking criteria stated in Sections 2 and 3 in formulating or implementing policies, and in the development of legislative proposals, that have tribal implications;
- facilitate a meaningful and timely form of consultation concerning the development, administration, and enforcement of regulations that have tribal implications; and
- provide certifications of compliance to OMB.

The tribal consultation official may designate staff to assist in the performance of these duties.

Pursuant to the President's November 5, 2009, Memorandum on Tribal Consultation, each agency and department must designate an appropriate official to coordinate implementation of the plan and preparation of progress reports. This official may be, but is not required to be, the same tribal consultation official required by E.O. 13175.

4. How does an agency designate its tribal consultation official?

The head of each agency should make this designation by notifying the OIRA Records Management Center (see question 13 below).

5. To what activities does the Order apply?

Section 2 sets forth "Fundamental Principles" to guide agencies in formulating and implementing policies that have tribal implications. Section 3 sets forth "Policymaking Criteria" to which agencies must adhere "to the extent permitted by law." These fundamental principles and policymaking criteria apply to an agency's "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" (Sec. 1(a)). The term "Indian tribe" means "an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe" (Sec. 1(b).) Further, pursuant to Pub. L. 108-199, 118 Stat. 452, as amended by Pub. L. 108-447, 118 Stat. 3267, OMB and all Federal agencies are required to "consult with Alaska Native corporations on the same basis as Indian tribes under Executive Order No. 13175."

⁵ The specific procedures for consultation with Indian tribal governments set forth in E.O. 13175 are closely similar to those set forth in E.O. 13132, "Federalism." Depending on how an agency has already decided to implement E.O. 13084 and E.O. 13132, an agency has the option of having the tribal consultation official designated under E.O. 13175 be the same official as the federalism official already designated under E.O. 13132.

6. What are the Order’s policymaking criteria?

Under Section 3, “Policymaking Criteria,” and in addition to adhering to the fundamental principles set forth in Section 2, agencies must adhere, to the extent permitted by law, to specified criteria when formulating and implementing policies that have tribal implications. Agencies must:

- respect Indian tribal self-government and sovereignty, honor tribal treaty and other rights, and strive to meet the responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments;
- with respect to Federal statutes and regulations administered by Indian tribal governments, grant Indian tribal governments the maximum administrative discretion possible;
- when undertaking to formulate and implement policies that have tribal implications,
 1. encourage Indian tribes to develop their own policies to achieve program objectives;
 2. where possible, defer to Indian tribes to establish standards; and
 3. in determining whether to establish Federal standards, consult with tribal officials as to the need for Federal standards and any alternatives that would limit the scope of Federal standards or otherwise preserve the prerogatives and authority of Indian tribes.

The Order establishes a process to ensure that agencies adhere to these policymaking criteria. For any draft final regulation that has tribal implications that is submitted to OIRA for review under E.O. 12866, the tribal consultation official must certify that the requirements of E.O. 13175 concerning both the evaluation of these policymaking criteria and consultation have been met in a meaningful and timely manner (Sec. 7(a)). This certification may take the form of a statement in the preamble of a draft final regulation explaining that either the consultation was conducted according to the requirements of E.O. 13175, or that there was no impact on tribal interests and thus no consultation was necessary.

7. What does the Order require concerning agency development of proposed legislation?

Agencies must not submit to the Congress legislation that would be inconsistent with the policymaking criteria stated in Section 3.

The Order establishes a process to ensure that agencies consider the “Special Requirements for Legislative Proposals” stated in Section 4. In transmitting for OMB clearance proposed legislation that has tribal implications, the tribal consultation official must certify that the “Special Requirements for Legislative Proposals” set forth in Section 4 have been met (Sec.7(b)). This certification may take the form of a statement that either the consultation was

conducted according to the requirements of E.O. 13175, or that there was no impact on tribal interests and thus no consultation was necessary.

8. What does the Order require concerning agency development of regulations?

Agencies must have “an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications” (Sec. 5(a)). The consultation process must involve “tribal officials” (Sec. 5(a)), which the Order defines to mean “elected or duly appointed officials of Indian tribal governments or authorized intertribal organizations” (Sec. 1(d)).

Each agency must submit to OMB “a description of the agency’s consultation process” when implementing the Order. Each description should indicate how the agency identifies those policies that have tribal implications and the procedures the agency will use to ensure meaningful and timely input by tribal officials. OMB encourages agencies to submit updates to this description as part of the annual update to OMB (see below).

The Order establishes specific procedures for consultation with tribal officials in two circumstances – if a rule imposes unfunded mandates on tribes or if a rule preempts tribal law.

- Subsection 5(b) establishes specific procedures for unfunded mandates. Subsection 5(b) defines a mandate as “any regulation that has tribal implications, that imposes substantial direct compliance costs on Indian tribal governments, and that is not required by statute.” Subsection 5(b)(1) permits an agency not to follow the specific procedures if the Federal government funds the direct costs of complying with the mandate.
- Subsection 5(c) establishes the specific procedures for “any regulation that has tribal implications and that preempts tribal law.”
- The specific procedures are identical for regulations that impose unfunded mandates or preempt tribal law. Agencies must adhere to these specific procedures “to the extent practicable and permitted by law” (Secs. 5(b) and 5(c)).
- Each agency must consult, to the extent practicable and permitted by law, with tribal officials “early in the process of developing the proposed regulation” (Sec. 5(b)(2)(A) & 5(c)(1)). These consultations should seek comment on compliance costs or preemption as appropriate to the nature of the rulemaking under development. The timing, nature, detail, and extent of the consultation involved should also be appropriate to the nature of the regulation involved.
- When an agency submits a draft final regulation to OMB for review under E.O. 12866 prior to promulgation of the final regulation, the agency must include in “a separately identified portion of the preamble to the regulation” a “tribal summary impact statement” (Secs. 5(b)(2)(B) & 5(c)(2)).

- The “tribal summary impact statement” must include –
 - “a description of the extent of the agency’s prior consultation with tribal officials;”
 - “a summary of the nature of their concerns and the agency’s position supporting the need to issue the regulation; and”
 - “a statement of the extent to which the concerns of tribal officials have been met” (Secs. 5(b)(2)(B) & 5(c)(2)).
- To the extent that an agency has carried out consultation with tribal officials prior to the publication of the Notice of Proposed Rulemaking (NPRM), the agency should help tribal officials, and the public as a whole, by including a “tribal summary impact statement” in its preamble to the NPRM.
- When submitting a draft final regulation to OMB for review, each agency must provide a copy of any formal policy-related correspondence from tribal officials, and must, on request, make available a copy of any other written communications submitted to the agency by tribal officials (Secs. 5(b)(2)(C) & 5(c)(3)).

9. Are tribal consultations under the Order subject to the Federal Advisory Committee Act?

No. The exemption to the Federal Advisory Committee Act provided in Section 204(b) of title II of P.L. 104-4, the “Unfunded Mandates Reform Act of 1995,” remains in effect. As OMB stated in its guidelines for implementing Section 204(b):

“In accordance with the legislative intent, the exemption should be read broadly to facilitate intergovernmental communications on responsibilities or administration.”

“This exemption applies to meetings between Federal officials and employees and State, local, or tribal governments, acting through their elected officers, officials, employees, and Washington representatives, at which ‘views, information, or advice’ are exchanged concerning the implementation of intergovernmental responsibilities or administration, including those that arise explicitly or implicitly under statute, regulation, or Executive order. The scope of meetings covered by the exemption should be construed broadly to include any meetings called for any purpose relating to intergovernmental responsibilities or administration. Such meetings include, but are not limited to, meetings called for the purpose of seeking consensus; exchanging views, information, advice, and/or recommendations; or facilitating any other interaction relating to intergovernmental responsibilities or administration.”⁶

⁶ OMB Memorandum 95-20 (September 21, 1995), pp. 6-7, 60 Fed. Reg. 50651, 50653 (September 29, 1995); *see* Delegation of Authority To Issue Guidelines or Instructions to Federal Agencies on Consulting With State, Local,

10. What does the Order provide concerning flexibility for Indian tribal waivers?

The Order directs agencies to “review the processes under which Indian tribes apply for waivers of statutory and regulatory requirements and take appropriate steps to streamline those processes” (Sec. 6(a)). It also sets forth the circumstances under which agencies must consider an application by an Indian tribe for a waiver of statutory or regulatory requirements. It encourages flexibility in granting waivers, but does not change applicable Federal waiver review criteria, including the principle of budget neutrality. It also sets a target completion date of 120 days after the filing of a complete waiver application for an agency decision. These provisions apply “only to statutory or regulatory requirements that are discretionary and subject to waiver by the agency” (Sec. 6(d)).

11. How should agencies document compliance with the Order?

President Obama’s November 5, 2009 Memorandum requires all agencies to create a detailed plan of action that documents steps the agency will take to implement the policies and directives of E.O. 13175. On August 2, 2010, and annually thereafter, agencies are required to submit to the Director of OMB a progress report on the status of each action included in its plan as well as any proposed updates to its plan. Each agency should submit these plans and reports to the OIRA Records Management Center (see question 13 below).

The Assistant to the President for Domestic Policy and the Director of OMB will review agency plans and subsequent reports for consistency with the policies and directives of E.O. 13175. By November 5, 2010, the Director of OMB, in coordination with the Assistant to the President for Domestic Policy, will submit to the President a report on the implementation of E.O. 13175 across the executive branch based on the review of agency plans and progress reports. Recommendations for improving the plans and making the tribal consultation process more effective should be included in this report when applicable.

In addition, under the Unfunded Mandates Reform Act (UMRA), Section 208, OMB must publish an annual report on agency compliance with the requirements of Title II, including agency compliance with Section 204, “State, Local, and Tribal Government Input.” Each year, OMB will request a summary of your progress in implementing the requirements of the Order as part of your description of your UMRA Section 204 consultations for the previous year.

12. Whom should we contact when we have questions concerning E.O. 13175?

For agency questions about the Order or this Memorandum, please contact your OIRA desk officer.

13. How should an agency submit documentation to OMB?

and Tribal Governments, President Clinton’s Memorandum to the Director of the Office of Management and Budget (August 25, 1995), 60 Fed. Reg. 45039 (August 29, 1995).

Please submit documentation to the OIRA Records Management Center via email (OIRA_Submission@omb.eop.gov). Please include “EO 13175” in the subject line. If email is not possible, call 202-395-6880 to make alternate arrangements.



THE SECRETARY OF THE INTERIOR
WASHINGTON

ORDER NO. 3317

Subject: Department of the Interior Policy on Consultation with Indian Tribes

Sec. 1 Purpose. The purpose of this Order is to update, expand, and clarify the Department's policy on consultation with American Indian and Alaska Native tribes; and to acknowledge that the provisions for conducting consultation in compliance with Executive Order (E.O) 13175 (Consultation and Coordination with Indian Tribal Governments) and applicable statutes or administrative actions are expressed in the Department of the Interior Policy on Consultation with Indian Tribes.

Sec. 2 Background. Based on a renewed commitment to assess its practices and the opportunities to enhance consultation with Indian tribes, the Department consulted with tribal leaders, engaged Department leadership from across the organization, and convened a working group of tribal and Department officials to recommend new approaches to consultation. These efforts produced a policy document that guides how the Department engages Indian tribes when meeting the Department's responsibilities to consult Indian tribes and how the Department can maximize the benefit of consultation.

Sec. 3 Authority. This Order is issued in accordance with the authority provided by 25 U.S.C. sections 2 and 9; and Section 2 of the Reorganization Plan No. 3 of 1950 (64 Stat. 1262), as amended.

Sec. 4 Policy.

a. Government-to-government consultation between appropriate Tribal officials and the Department requires Departmental officials to demonstrate a meaningful commitment to consultation by identifying and involving Tribal representatives in a meaningful way early in the planning process.

b. Consultation is a process that aims to create effective collaboration with Indian tribes and to inform Federal decision-makers. Consultation is built upon government-to-government exchange of information and promotes enhanced communication that emphasizes trust, respect, and shared responsibility. Communication will be open and transparent without compromising the rights of Indian tribes or the government-to-government consultation process.

c. Bureaus and offices will seek to promote cooperation, participation, and efficiencies between agencies with overlapping jurisdictions, special expertise, or related responsibilities when a Departmental action with Tribal implications arises. Efficiencies derived from the inclusion of Indian tribes in all stages of the tribal consultation will help ensure that future Federal action is achievable, comprehensive, long-lasting, and reflective of tribal input.

Sec. 5 Responsibilities.

a. Tribal Governance Officer. A Senior Departmental Official designated by the Secretary will serve as the Department's Tribal Governance Officer and will, in coordination with the Assistant Secretary – Indian Affairs establish and oversee the activities of a joint Federal Tribal Team, as described more fully in Section 9, below.

b. Tribal Liaison Officer. Heads of bureaus and offices will designate at least one official to serve as a Tribal Liaison Officer to carry out appropriate duties described in this Order.

c. Bureaus and Offices. Within 180 days of the effective date of this Order, bureaus and offices will review their existing practices, revise those practices as needed in order to comply with this policy, and begin a process to reference practices on tribal consultation in their appropriate bureau or office manual.

Sec. 6 Training Plan. Within 180 days of the effective date of this Order, the Office of Strategic Employee and Organizational Development will develop and present to the Tribal Governance Officer a plan of action to implement the provisions of this Order, including development and delivery of the training.

Sec. 7 Reporting Requirements. Within 180 days of the effective date of this Order, bureaus and offices will provide to the Tribal Governance Officer the results of their efforts to promote consultation with Indian tribes. Reports shall be submitted annually, thereafter, within 60 days of the end of the fiscal year.

Sec. 8 Certification. Heads of bureaus and offices will certify in a written statement that is part of the final publication for all regulations under their purview that the regulatory process complies with E.O. 13175.

Sec. 9 Establishment of Joint Tribal-Federal Team. A Joint Federal Tribal Team (Team) is established beginning with the effective date of this Order. The Team will convene a minimum of two (2) times annually to identify areas and opportunities for improvements in the Department's consultation practices.

a. Membership. Within 45 days of the effective date of this order, the Tribal Governance Officer will recommend to the Secretary a list of members to serve on the Team. The recommended list of members should represent diversity for the Department and the tribes. Members will continue to serve on the Team at the discretion of the Secretary.

b. Annual Work Plan. The Team will develop an annual work plan that identifies priorities that will improve the quality of the Department's consultation practices with Indian tribes.

Sec. 10 Establishment of an American Indian and Alaska Native Leaders List. A single Departmental process shall be established to manage and maintain the contact list for all tribes and Alaska Native Corporation Settlement Act (ANCSA) corporations that are eligible for Federal consultation.

a. Action Plan. In compliance with Departmental consultation policy requirements for enhanced communication; the Tribal Governance Officer, the Chief Information Officer, the Director of the Bureau of Indian Affairs and the Director of the Fish and Wildlife Service will develop a plan of action to establish an electronic database that features an interactive system to update and list all appropriate points of contact for Indian tribes and ANCSA corporations that are eligible for consultation under Federal law.

b. Inter-Agency Outreach. The Assistant Secretary – Indian Affairs will solicit from applicable Federal agency heads any proposals to coordinate the use and access to any communication lists used for the purpose of federal compliance with E.O. 13175.

Sec. 11 Effective Date. This Order is effective immediately. It shall remain in effect until its provisions are converted to the Departmental Manual, or until it is amended, superseded, or revoked, whichever occurs first. In the absence of any of the foregoing actions, the provisions of this Order will terminate and become obsolete on December 30, 2012. The termination of this Order will not nullify the Department's consultation policy, effected herein.



Secretary of the Interior

Date: **DEC 01 2011**

**Department of the Interior Policy on Consultation with Alaska Native
Claims Settlement Act (ANCSA) Corporations****I. Preamble**

In compliance with Congressional direction, this Policy creates a framework for consulting with Alaska Native Claims Settlement Act of 1971 (ANCSA) Corporations. The ANCSA Corporations were established ANCSA to provide for the economic and social needs, including the health, education, and welfare, of their shareholders. Congress also required that “[t]he Director of the Office of Management and Budget [and all Federal agencies] shall hereafter consult with Alaska Native corporations on the same basis as Indian tribes under Executive Order No. 13175.”¹ This Policy is to be read in conjunction with the existing Department of the Interior Policy on Consultation with Indian Tribes (Tribal Consultation Policy). The select provisions of the Tribal Consultation Policy are modified below for the purpose of consultation with ANCSA Corporations. The Department of the Interior (Department) distinguishes the Federal relationship to ANCSA Corporations from the government-to-government relationship between the Federal Government and federally recognized Indian Tribes in Alaska and elsewhere, and this Policy will not diminish in any way that relationship and the consultation obligations towards federally recognized Indian Tribes.

Recognizing the distinction, the Department is committed to fulfilling its ANCSA Corporation consultation obligations by adhering to the framework described in this Policy as it supplements the Tribal Consultation Policy. When taking Departmental Action that has a

¹ Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, Div. H. § 161, 118 Stat. 3, 452 (2004) as amended by Consolidated Appropriations Act, 2005, Pub. L. No. 108-447, Div. H., Title V. §518, 118 Stat. 2809, 3267 (2004).

substantial direct effect on ANCSA Corporations, the Department will initiate consultation with ANCSA Corporations.

II. Guiding Principles

This Policy broadly defines provisions for improving the Department's consultation processes with ANCSA Corporations and shall complement, not supersede, any existing laws, rules, statutes, or regulations that guide consultation processes with Indian Tribes. The Department recognizes and respects the distinct, unique, and individual cultural traditions and values of Alaska Native peoples and the statutory relationship between ANCSA Corporations and the Federal Government. To the extent that concerns expressed by Indian Tribes and ANCSA Corporations substantively differ, Departmental officials shall give due consideration to the right of sovereignty and self-governance of federally recognized Indian Tribes.

Consultation between the Department and ANCSA Corporations will involve appropriate Departmental officials and appropriate ANCSA Corporation officials on Departmental Actions with ANCSA Corporation implications. The appropriate Departmental officials are those individuals who are knowledgeable about the matters at hand, are authorized to speak for the Department, and exercise delegated authority in the disposition and implementation of an agency action. Departmental officials will identify consulting parties early in the planning process and provide a meaningful opportunity for ANCSA Corporations to participate in the consultation policy as described in Section VII of this Policy. Department officials will endeavor to fully participate in the consultation process, ensure continuity, and demonstrate commitment to the process.

Consultation is a deliberative process that aims to create effective collaboration and informed Federal decision-making. This Policy creates an opportunity for input from all affected

ANCSA Corporations. Federal consultation conducted in a meaningful and good-faith manner further facilitates effective Department operations and governance practices. To that end, Bureaus and Offices will seek and promote cooperation, participation, and efficiencies between agencies with overlapping jurisdiction, special expertise, or related responsibilities regarding a Departmental Action with ANCSA Corporation Implications. Efficiencies that derive from including ANCSA Corporations in the Department's decision-making processes through consultation will help to ensure that future Federal action is achievable, comprehensive, long-lasting, and reflective of ANCSA Corporation input.

III. Definitions

In addition to the definitions of terms provided in the Department of the Interior Policy on Consultation with Indian Tribes, the following terms are defined for purposes of this Policy.

Departmental Action with ANCSA Corporation Implications – Any Departmental regulation, rulemaking, policy, guidance, legislative proposal, grant funding formula changes, or operational activity that may have a substantial direct effect on an ANCSA Corporation, including:

1. Any activity that may substantially affect ANCSA Corporation land, water areas, or resources;
2. Any activity that may impact the ability of an ANCSA Corporation to participate in Departmental programs for which it qualifies.

This term, however, does not include matters that are in litigation or settlement negotiations, or matters for which a court order limits the Department's discretion to engage in consultation.

ANCSA Corporation – Any Alaska Native village corporation, urban corporation, or regional corporation as defined in, or established pursuant to, the Alaska Native Claims Settlement Act.²

ANCSA Corporation Official or Designee – An official or ANCSA member designated in writing by an ANCSA Corporation.

IV. Accountability and Reporting

The provisions in Section IV, entitled Accountability and Reporting, of the Department of the Interior Policy on Consultation with Indian Tribes shall apply to this Policy, with adjustments as appropriate given the unique status, structure, and interests of ANCSA Corporations.

V. Training

The provisions in Section V, entitled Training, of the Tribal Consultation Policy shall apply to this Policy, with adjustments as appropriate given the unique status, structure, and interests of ANCSA Corporations.

VI. Innovative and Effective Consultation Practices

The provisions in Section VI, entitled Innovative and Effective Consultation Practices, of the Tribal Consultation Policy shall apply to this Policy, with adjustments as appropriate given the unique status, structure, and interests of ANCSA Corporations.

² 43 U.S.C. § 1601 *et seq.*

VII. Consultation Guidelines

The provisions in Section VII, entitled Consultation Guidelines, of the Tribal Consultation Policy shall apply to this Policy, with adjustments as appropriate given the unique status, structure, and interests of ANCSA Corporations.

VIII. Supplemental Policies.

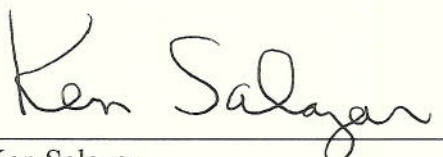
Bureaus and Offices, in collaboration with the Tribal Governance Officer (TGO), shall review existing policies that may be impacted by this Policy. All existing policies shall conform to this Policy and, where necessary, a Bureau or Office may develop a new policy in order to conform to this Policy.

Departmental entities that are not Bureaus and Offices may develop policies consistent with this Policy and in coordination with the TGO.

IX. Disclaimer.

Except to the extent already established by law, this Policy is intended only to improve the internal management of the Department, and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the Department or any person. The Department does not waive any applicable privilege that it may hold by virtue of this Policy.

Date: **AUG 10 2012**



Ken Salazar

List of Federal Tribal Consultation Statutes, Orders, Regulations, Rules, Policies, Manuals, Protocols and Guidance

January 2009

Note: This list was prepared by the White House – Indian Affairs Executive Working Group (WH-IAEWG), Consultation and Coordination Advisory Group (CACAG). It contains those federal Tribal consultation statutes, orders, regulations, policies, manuals, and protocols that specify procedures as to how Departments, agencies and bureaus are to carry out consultation. It also includes many of the laws, orders, regulations and policies requiring that government-to-government relationships with tribes be carried out however, it does not purport to be comprehensive or all encompassing.

Part I: Legal Authorities Requiring Consultation - Government-wide

A. Statutes Requiring Consultation – Government-wide:

1. American Indian Religious Freedom Act (AIRFA) (16 U.S.C. 1996)

AIRFA establishes the policy of the federal government “to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including, but not limited to, access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites.”

2. Archeological Resources Protection Act of 1979. (ARPA) (16 U.S.C. 470aa-mm)

ARPA requires federal agencies to consult with tribal authorities before permitting archeological excavations on tribal lands (16 U.S.C. 470cc(c)). It also mandates the confidentiality of information concerning the nature and location of archeological resources, including tribal archeological resources. (Also refer to the ARPA implementing regulations concerning consultation.)

3. National Historic Preservation Act (NHPA) (16 U.S.C. 470 et seq.)

In carrying out its responsibilities under section 106 of this Act, a Federal agency shall consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to properties described in subparagraph (A). (Section 101(d) (6) (B))

4. Native American Graves Protection and Repatriation Act (25 U.S.C. 3001, et. seq.)

NAGPRA requires consultations with Indian tribes, traditional religious leaders and lineal descendants of Native Americans regarding the treatment and disposition of specific kinds of human remains, funerary objects, sacred objects and other items. Under the Act, consultation is required under certain circumstances, including those identified in Sections 3002(c), 3002(d), 3003, 3004, and 3005. (Also refer to the NAGPRA implementing regulations concerning consultation.)

Detailed information about NAGPRA and its implementing regulations is available at the National Park Service (NPS) National NAGPRA website, which can be found at: <http://www.nps.gov/history/nagpra/>

B. Regulations Requiring Consultation - *Government-wide*

1. Native American Graves Protection and Repatriation Act (NAGPRA) Implementing Regulations (43 CFR 10)

The NAGPRA implementing regulations refer to consultation or consultation-related concerns in several sections, including (but not limited to): 43 CFR 10.5 (consultation requirements for intentional excavation or inadvertent discovery), 43 CFR 10.8 (consultation requirements for summaries), 43 CFR 10.9 (consultation requirements for inventories). The regulations also specify other requirements for communicating with tribes, though without requiring consultation.)

2. National Environmental Policy Act (NEPA) Implementing Regulations 40 CFR Part 1500

NEPA requires the preparation of an environmental assessment (EA) or environmental impact statement (EIS) for any proposed major federal action that may significantly affect the quality of the human environment. While the statutory language of NEPA does not mention Indian tribes, the Council on Environmental Quality (CEQ) regulations and guidance do require agencies to contact Indian tribes and provide them with opportunities to participate at various stages in the preparation of an EA or EIS. CEQ has issued a Memorandum for Tribal Leaders encouraging tribes to participate as cooperating agencies with federal agencies in NEPA reviews. Section 40 CFR 1501.2(d)(2) requires that Federal agencies consult with Indian tribes early in the NEPA process. Other sections also refer to interacting with Indian tribes while implementing the NEPA process.

3. National Historic Preservation Act (NHPA) Regulations Implementing Section 106 (36 CFR Part 800)

The regulations implementing Section 106 of the NHPA require consultation with Indian tribes throughout the historic preservation review process. Federal agencies are required

to consult with Indian tribes on a government-to-government basis, in a manner that is respectful of tribal sovereignty. The regulations require federal agencies to acknowledge the special expertise of Indian tribes in determining which historic properties are of religious and cultural significance to them.

C. Executive Orders and Memoranda Requiring Consultation – *Government-wide*

1. EO 13175: Consultation and Coordination with Indian Tribal Governments (Nov. 6, 2000)
2. EO 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (February 11, 1994) - Published in Federal Register, 59 FR 7629, Wednesday, February 16, 1994
<http://www.hud.gov/offices/fheo/FHLaws/EXO12898.cfm>

Section 6-606, entitled “Native American Programs,” requires that each Federal agency responsibility set forth under this order shall apply equally to Native American programs. In addition, the Department of the Interior, in coordination with the Working Group, and, after consultation with tribal leaders, shall coordinate steps to be taken pursuant to this order that address Federally-recognized Indian Tribes.

Part II: Legal Authorities Requiring Consultation - *Two or More Agencies*

1. Statutes Requiring Consultation

- a. DOI and HHS: Indian Self-Determination and Education Assistance Act (25 U.S.C. 450)
The Indian Self-Determination and Education Assistance Act (Public Law 93-638, as amended) applies to certain activities of the Department of the Interior and the Indian Health Service, located in the Department of Health and Human Services). The Act establishes a Self-Determination Policy and permits federally recognized Indian tribes to plan, conduct, and administer programs and services that traditionally have been managed by the federal government, subject to the conditions specified by the Act and its implementing regulations. Both the Act and regulations require that consultation be carried out under specified circumstances.
- b. DOJ, and HHS: Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA II) Pub.L. No. 109-162- (2005)
Title IX (Safety for Indian Women), Sec. 90 – Consultation, 42 U.S. C. & 14045d Section 903 of Title IX, “Consultation”, directs the Attorney General and Secretary of Health and Human Services to each conduct annual consultation with Indian tribal government concerning the federal administration of tribal funds and programs established under the Violence Against Women Act of 1994 and 2000. This requires the Attorney General,

during such consultations, to solicit recommendations from Indian tribes concerning: (1) administering tribal funds and programs ; (2) ENHANCING THE SAFETY OF Indian women from domestic violence, dating violence, sexual assault and stalking; and (3) strengthening the federal response to such violent crimes.

- c. (DOI, DOJ, and HHS) Tom Lantos and Henry J. Hyde United States Global Leadership Against HIV/AIDS, Tuberculosis, and Malaria Reauthorization Act of 2008.
Title VI—Emergency Plan for Indian Safety and Health. In general, there is an authorization for a 2 billion dollar emergency fund to be appropriated for a year period, beginning October 1, 2008, to remain available until expended on request by the Attorney General, the Secretary of the Interior, or the Secretary of Health and Human Services to carry out the emergency plan. Not later than one year after the date of enactment (July 30, 2008), the Attorney General, the Secretary of the Interior and the Secretary of Health and Human Services, in consultation with Indian tribes (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450(b)), shall jointly establish an emergency plan that addresses law enforcement, water, and health care needs of Indian tribes, in specified categories and amounts.

2. Regulations Requiring Consultation

- a. DOI and HHS: Indian Self-Determination and Education Assistance Act Implementing Regulations (25 CFR Parts 900 and 1000)

Please refer to item under “Statutes” for a discussion of this Act and its regulations.

3. Secretarial Orders and Memoranda Requiring Consultation

- a. DOC and DOI: Dept. of the Interior
 - 1. SO 3206: Tribal Rights, Trust Responsibilities and the Endangered Species Act (June 5, 1997)
This order was issued jointly by the Secretaries of the Interior and Commerce, and applies to both Departments. It provides guidance about the federal-tribal relationship and how this relationship should affect the implementation of the Endangered Species Act. The order requires consultations with tribal governments in several situations described in the order, including Principal 1’s requirement that whenever “agencies, bureaus, and offices of the Departments are aware that their actions planned under the Act may impact tribal trust resources, the exercise of tribal rights, or Indian lands, they shall consult with, and seek the participation of, the affected Indian tribes to the maximum extent practicable and Principal 3(B)’s requirement that the “Departments shall conduct government-to-government consultations to discuss the extent to which tribal resource management plans for tribal trust resources outside Indian lands can be incorporated into actions to address the conservation needs of listed species.”

**Part III: Legal Authorities and Other Policies, Procedures or Guidelines
Requiring Consultation - *Department, Agency, or Bureau Specific***

GOVERNMENT-WIDE EXECUTIVE DEPARTMENTS

DEPARTMENT OF AGRICULTURE (USDA)

USDA Web Page:

<http://www.usda.gov/na>

USDA Departmental Regulation, 1350-001, September 11, 2008, Tribal Consultation

<http://www.ocio.usda.gov/directives/doc/DR1350-001.pdf>

USDA Departmental Regulation, 1340-007, March 14, 2008, Policies on American Indians and Alaska Natives

<http://www.ocio.usda.gov/directives/doc/DR1340-007.pdf>

USDA Departmental Regulation 1020-005, October 3, 2008 Native American Working Group

<http://www.ocio.usda.gov/directives/doc/DR1020-005.htm>

Forest Service

FSM (Forest Service Manual) – 1500 -External Relations
Chapter 1560 – State, Tribal, County, and Local Agencies, Public and Private Organizations

Forest Service Tribal Policies, Including Consultation, are contained in Section 1563, available at:

http://www.fs.fed.us/cgi-bin/Directives/get_dirs/fsm?1500

(Available in word document or text document, select 1562 – 1566.11 from list)

Natural Resources Conservation Service (NRCS)

General Manual: Title 410-Rural Development, Part 450-American Indians and Alaska Natives

<http://directives.sc.egov.usda.gov/17072.wba>

General Manual: Title 420-Social Sciences, Part 401 Cultural Resources (Archeology and historical Properties)

<http://directives.sc.egov.usda.gov/17073.wba>

Handbook: Title 190-Ecological Sciences, Part 601-National Cultural Resources Procedures Handbook, (see 601.62)

<http://directives.sc.egov.usda.gov/17090.wba>

Rural Development

www.rurdev.usda.gov/rd/aian

Animal Plant Health Inspection Service

Directive 1040 concerning employees' relationship with the federally recognized tribes:
http://www.aphis.usda.gov/about_aphis/programs_offices/anawg/downloads/1040-06.pdf

Office of the Assistant Secretary of Civil Rights

<http://www.ascr.usda.gov/partnerships.html>
<http://www.ascr.usda.gov/doc/MOAUSDAAIHECSIGNED2508.pdf>

DEPARTMENT OF COMMERCE (DOC)

DEPARTMENT OF DEFENSE (DOD)

Department of Defense American Indian and Alaska Native Policy
<https://www.denix.osd.mil/portal/page/portal/content/environment/NA/1-American%20Indian%20and%20Alaska%20Native%20Policy.pdf>

Department of Defense American Indian and Alaska Native Policy (Annotated)
[https://www.denix.osd.mil/portal/page/portal/content/environment/NA/3-composite%20annotated%20policy%20for%20posting%20TA%206-08%20\(2\).pdf](https://www.denix.osd.mil/portal/page/portal/content/environment/NA/3-composite%20annotated%20policy%20for%20posting%20TA%206-08%20(2).pdf)

Department of Defense American Indian and Alaska Native Policy - Instruction
<https://www.denix.osd.mil/portal/page/portal/content/environment/NA/2-Policy%20Instruction%20for%20Posting%20RB%206-08.pdf>

Department of Defense Instruction No. 4710.02: DoD Interactions with Federally-Recognized Tribes (2006). See especially Enclosure 8, "Principles for Consultations with Native Americans." <http://www.dtic.mil/whs/directives/corres/pdf/471503.pdf>

Department of the Navy

Department of the Navy Policy for Consultation with Federally Recognized Indian Tribes. (2005)
<http://doni.daps.dla.mil/Directives/11000%20Facilities%20and%20Land%20Management%20Ashore/11-00%20Facilities%20and%20Activities%20Ashore%20Support/11010.14A.pdf>

Instruction No. 11010.14A, Department of Navy Policy for Consultation with Federally Recognized Indian Tribes. (2005)
<http://doni.daps.dla.mil/Directives/11000%20Facilities%20and%20Land%20Management%20Ashore/1100%20Facilities%20and%20Activities%20Ashore%20Support/11010.14A.pdf>

Marine Corps

Marine Corps Order (MCO) 5090.2A, Chapter 8, provides cultural resources policy (including consultation) for the Marine Corps. In preparation.

Department of the Army

Army Regulations 200-4: Cultural Resources Management Program (2004)

See especially Section 1-9(c) on government-to-government relations and consultation.

<http://www.gordon.army.mil/dpw/enrmo/ar200-4.html>

U.S. Army Corp of Engineers, Civil Works, Policy Guidance Letter 57: Tribal Policy Principles. 1998. "Consulting with Tribal Nations: A Guide for the US Army Corps of Engineers". (2008)

www.usace.army.mil/cw/tribal/index.html

Department of the Air Force

Air Force Instruction 32-7065; Cultural Resources Management Program (2004)

See especially Chapter 3.2 "Consultation with Native Americans."

http://www.afpmb.org/military_entomology/usafento/files/afi32-7065.pdf

DEPARTMENT OF EDUCATION (ED)

DEPARTMENT OF ENERGY (DOE)

US Department of Energy American Indian Policy

www.ci.doe.gov/tapolicy.htm

A Guide for DOE Employees Working with Indian Tribal Nations (2000)

http://homer.ornl.gov/oepa/guidance/cultural/em_guide.pdf

DOE American Indian and Alaska Native Tribal Government Policy: The Department's Tribal Policy

www.ci.doe.gov/tapolicy.htm

Framework for the Implementation of the DOE American Indian Alaskan Native Tribal Government Policy for the Offices of Environmental Management, Nuclear Energy, Science, and National Nuclear Security Administration: The implementation of the Policy as applied to specific offices with landlord responsibilities near specific Indian lands.

DOE Employee Guide: *Working With Indian Tribal Nations (DOE/EM-0771, December 2000)*: An introduction for federal government employees who work with American Indian staff or governments

DOE Order 1230.2: Internal DOE Order transmitting the Tribal Policy and identifying the responsibilities of individual programs to identify points of contact for tribal issues

Native American Consultation Information Brief” (DOE/EH-41-0019/1204, December 2004

Environmental Guidelines for the Development of Cultural Resource Management Plans – Update” (DOE Guide 450.1-3)

Radioactive Material Transportation Practices Manual (DOE M 460.2-1)

Working with Indian Tribal Nations; December, 2000 U.S. Department of Energy
Transportation Resources for Tribes; July, 2003 U.S. Department of Energy,

Bonneville Power Administration

BPA Tribal Policy. (1996)

<http://www.bpa.gov/corporate/kt/tribpolx.shtml>

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

HHS Tribal Consultation Policy

<http://www.hhs.gov/intergovernmental/tribal/docs/tribalconsultationpolicyfeb08.pdf>

All HHS Agency Consultation Plans

<http://www.hhs.gov/intergovernmental/tribal/allplans.pdf>

Administration for Children & Families (ACF)

Administration on Aging (AoA)

Agency for Healthcare Research & Quality (AHRQ)

Agency for Toxic Substances & Disease Registry (ATSDR)

Centers for Disease Control & Prevention (CDC)

Centers for Medicare & Medicaid Services (CMS)

Food & Drug Administration (FDA)

Health Resources & Services Administration (HRSA)

Indian Health Service (IHS)

National Institutes of Health (NIH)

Substance Abuse & Mental Health Services Administration (SAMHSA)

All HHS Staff Divisions Consultation Plan

<http://www.hhs.gov/intergovernmental/tribal/osplan.html>

DEPARTMENT OF HOMELAND SECURITY (DHS)

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD)

Government-to-Government Tribal Consultation Policy

http://www.hud.gov/offices/pih/ih/regs/govtogov_tcp.cfm

DEPARTMENT OF INTERIOR (DOI)

1. Department-wide:

(1) *Departmental Responsibilities for Indian Trust Resources* (1995) [Series: Intergovernmental Relations; Part 512: American Indian and Alaska Native Programs; Chapter 2: Departmental Responsibilities for Indian Trust Resources; 512 DM 2] - <http://elips.doi.gov/elips/release/3049.htm>

This DM requires consultation with potentially affected recognized Indian tribal governments in the event an evaluation reveals any impacts on Indian trust resources, trust assets, or tribal health and safety.

(2) *Departmental Manual Departmental Responsibilities for Protecting/Accommodating Access to Indian Sacred Sites* (1998) [Series: Intergovernmental Relations; Part 512: American Indian and Alaska Native Programs; Chapter 3: Departmental Responsibilities for Protecting/Accommodating Access to Indian Sacred Sites; 512 DM 3] - http://elips.doi.gov/app_dm/act_getfiles.cfm?relnum=3214

This DM requires consultation with potentially affected federally recognized tribal government(s) when taking actions pursuant to this DM, which pertains to avoiding adverse impacts to and providing access to Indian sacred sites.

(3) ECM 97-2 Departmental Responsibilities for Indian Trust Resources and Indian Sacred Sites on Federal Lands
<http://oepec.doi.gov/ECM/ECM97%2D2%2Epdf>

Requires DOI offices and bureaus to consult with tribes in the course of carrying out environmental compliance when potential impacts to Indian Trust Resources or Indian Sacred Sites are identified.

2. Bureau-specific

a. Bureau of Indian Affairs

Government-to-Government Consultation Policy. (2000)

http://www.fpa.nifc.gov/Library/Memos/Docs/Bureau_of_Indian_Affairs_Consultation_Policy.pdf.

(Note: "consultation" was misspelled in the creation of this link-Monique)
Government-to-Government Consultation Policy (2000)

http://www.doi.gov/bia/tribal_consultation.html

b. Bureau of Indian Education

Department of the Interior, Bureau of Indian Affairs Programs. Policy for Indian Control of Indian Education (25 U.S.C. 2011).

The statute mandates secretarial consultation with tribes to ensure quality education for all tribal members. It includes a definition of consultation. (Note: The Office of Indian Education Programs was taken out of the Bureau of Indian Affairs in 2007 to become the Bureau of Indian Education (BIE). This statute only applies to BIE, within the Department of Interior.

c. U.S. Geological Survey

(1) U.S. Geological Survey Manual, Section 500.4 Policy on Employee Responsibility Towards American Indians and Alaska Natives. (1995) <http://www.usgs.gov/usgs-manual/500/500-4.html>

(2) U.S. Geological Survey Manual, Section 500.6 American Indian and Alaska Native Sacred Sites. (1997) <http://www.usgs.gov/usgs-manual/500/500-6.html>

d. National Park Service

(1) A compilation of NPS management policies pertaining to Native Americans. (2001) <http://www.nps.gov/policy/NativeAmericanPolicies.htm>

(2) Native American Consultation Database. <http://www.cast.uark.edu/other/nps/nacd/>

A compilation of NPS management policies pertaining to Native Americans. (2001) <http://www.nps.gov/policy/NativeAmericanPolicies.htm>

National NAGPRA Online Databases: Native American Consultation Database. <http://www.cast.uark.edu/other/nps/nacd/>

e. Bureau of Reclamation

(1) Protocol Guidelines: Consulting with Indian Tribal Governments <http://www.usbr.gov/native/naao/policies/protguide.pdf>

(2) Guidance for Implementing Indian Sacred Sites Executive Order (September 16, 1998)

(3) Indian Policy of the Bureau of Reclamation. (1998) <http://www.usbr.gov/native/naao/policies/indianpol.pdf>

(4) Note: This list does not include all Bureau of Reclamation policies or guidance indicating that consultation with tribal governments should be carried out, but omits policies which merely augments other, higher level sources, such as statutes, CFR's, EO's, SO's or DM's, which require consultation under specific circumstances.

f. **Bureau of Land Management**

Manual 8120 Tribal Consultation under Cultural Resource Authorities.
(2004)

http://www.blm.gov/style/medialib/blm/wo/Information_Resources_Management/policy/blm_manual.Par.80216.File.dat/8120.pdf

Handbook H-8120-1 Guidelines for Conducting Tribal Consultation. (2004)

http://www.blm.gov/style/medialib/blm/wo/Information_Resources_Management/policy/blm_handbook.Par.86923.File.dat/h8120-1.pdf

DEPARTMENT OF JUSTICE (DOJ)

Department of Justice Policy on Indian Sovereignty and Government-to-Government Relations with Indian Tribes. (1995)

<http://www.usdoj.gov/ag/readingroom/sovereignty.html>

DEPARTMENT OF LABOR (DOL)

DEPARTMENT OF STATE (DOS)

DEPARTMENT OF THE TREASURY

Internal Revenue Service (IRS)

- IRS has consultation "procedures" that direct how IRS will implement Department of the Treasury Consultation Policy.
- The procedures are currently under review and not yet final. The IRS has developed the procedures via a working group that included tribal representatives. -In effect, the IRS "consulted on consultation". The procedures have two components: (1) Ad hoc consultation where a tribe can request to meet on an issue of concern and "Listening Meetings" where we invite tribal representatives from the BIA regions (4 per year) to open a dialogue on an issue of concern to them, suggestions they may have on IRS operations, and questions about federal tax and Bank Secrecy Act issues. There have been 11 consultation meetings since December of 2005 and another is tentatively scheduled for this December.
- A link that outlines the guidelines to these meetings is:

Information on IRS tribal consultation listening meetings and schedules:
<http://www.irs.gov/govt/tribes/article/0,,id=150031,00.html>

Information on IRS protocol for contacting Tribes:
<http://www.irs.gov/govt/tribes/article/0,,id=185150,00.html>

DEPARTMENT OF TRANSPORTATION (DOT)

DOT Order 5301.1

Department of Transportation Programs, Policies, and Procedures affecting American Indians, Alaska Natives and Tribes

<http://www.environment.fhwa.dot.gov/guidebook/vol2/5301.1.pdf>

Federal Highway Administration

Section 106 Tribal Consultation Q & A's:

<http://www.fhwa.dot.gov/hep/tribaltrans/tcqa.htm>

Federal Aviation Administration

American Indian and Alaska Native Tribal Consultation Policy and Procedures. (2004)

http://overflights.faa.gov/apps/GetFile.CFM?File_ID=88

Federal Aviation Administration

FAA Order 1210.20,

American Indian and Alaska Native Tribal Consultation Policy and Procedures (2004)

http://www.faa.gov/regulations_policies/orders_notices/media/1210.pdf

DEPARTMENT OF VETERANS AFFAIRS (VA)

Directive 8603 “Consultation and Visitation with American Indians and Alaskan Natives:
www1.va.gov/vapubs/viewPublication.asp?Pub_ID=335&FType=2

Handbook 7545 “Cultural Resource Management Procedures”

www1.va.gov/vapubs/viewPublication.asp?Pub_ID=312&FType=2

Native American Veteran Housing Loan Program: Statutory mandate regarding VA personnel working with Native American veterans and Native Tribal Authorities: 38 U.S.C. Section 3762.

Native American Veteran Housing Loan Program: Regulatory requirement (for the same program) 38 CFR Section 36.4527, Direct housing loans to Native American veterans on trust lands.

VA and HHS have a MOU to encourage cooperation and resource sharing between the Veterans Health Administration (VHA) and Indian Health Service (IRS). The goal of the MOU is to use the strengths and expertise of each organization to deliver quality health

care services and enhance the health of American Indian and Alaska Native veterans. This MOU establishes joint goals and objectives for ongoing collaboration between VHA and IHS in support their respective missions.

VHA Handbook 1111.2, Spiritual and Pastoral Care Procedures, includes several references about including American Indian and Alaskan Native traditional practices in VA Health Administration facilities.

INDEPENDENT AGENCIES AND GOVERNMENT CORPORATIONS

ADVISORY COUNCIL ON HISTORIC PRESERVATION (ACHP)

Policy Statement on the ACHP's Relationships with Indian Tribes (2000)

<http://www.achp.gov/policystatement-tribes.html>

Tribal Consultation in the Section 106 Review Process; A Handbook (2008)

<http://www.achp.gov/nap.html>

AFRICAN DEVELOPMENT FOUNDATION

AMTRAK (National Railroad Passenger Corporation)

CENTRAL INTELLIGENCE AGENCY (CIA)

COMMISSION ON CIVIL RIGHTS

COMMODITY FUTURES TRADING COMMISSION

CONSUMER PRODUCT SAFETY COMMISSION (CPSC)

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE (CNCS)

[Corporation for National and Community Service](http://www.cnsc.gov)

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

ELECTION ASSISTANCE COMMISSION

ENVIRONMENTAL PROTECTION AGENCY (EPA)

Public Involvement Policy of the U.S. Environmental Protection Agency.

<http://www.epa.gov/publicinvolvement/policy2003/policy2003.pdf> (2003)

<http://www.epa.gov/tribal/basicinfo/epa-policies.htm>

National Environmental Justice Advisory Council Indigenous Peoples Subcommittee.
(2000) *Guide on Consultation and Collaboration with Indian Tribal Governments and the Public Participation of Indigenous Groups and Tribal Members in Environmental Decision Making.*

http://www.epa.gov/compliance/resources/publications/ej/ips_consultation_guide.pdf

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC)

EXPORT-IMPORT BANK OF THE UNITED STATES

FARM CREDIT ADMINISTRATION

FEDERAL COMMUNICATIONS COMMISSION (FCC)

Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes.

FEDERAL DEPOSIT INSURANCE CORPORATION (FDIC)

FEDERAL ELECTION COMMISSION (FEC)

FEDERAL HOUSING FINANCE BOARD

FEDERAL LABOR RELATIONS AUTHORITY

FEDERAL MARITIME COMMISSION

FEDERAL MEDIATION AND CONCILIATION SERVICE

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

FEDERAL ENERGY REGULATORY COMMISSION

Federal Energy Regulatory Commission. (2003). *Policy Statement on Consultation with Indian Tribes in Commission Proceedings.*

<http://www.ferc.gov/whats-new/comm-meet/072303/M-2.pdf>

FEDERAL RESERVE SYSTEM

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

FEDERAL TRADE COMMISSION (FTC)

GENERAL SERVICES ADMINISTRATION (GSA)

GSA's [*Policy Toward Native American and Alaskan Tribes \(ADM 1072.1\)*](#), November 17,1999

INSTITUTE OF MUSEUM AND LIBRARY SERVICES

INTER-AMERICAN FOUNDATION

INTERNATIONAL BROADCASTING BUREAU (IBB)

MERIT SYSTEMS PROTECTION BOARD

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (NASA)

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION (NARA)

NATIONAL CAPITAL PLANNING COMMISSION

NATIONAL COUNCIL ON DISABILITY

NATIONAL CREDIT UNION ADMINISTRATION (NCUA)

NATIONAL ENDOWMENT FOR THE ARTS

NATIONAL ENDOWMENT FOR THE HUMANITIES

NATIONAL INDIAN GAMING COMMISSION

National Indian Gaming Commission Government-to-Government Tribal Consultation
Policy (2004)

<http://www.nigc.gov/AboutUs/GovttoGovtPolicyOverview/tabid/73/Default.aspx>

NATIONAL LABOR RELATIONS BOARD (NLRB)

NATIONAL MEDIATION BOARD

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)

NATIONAL SCIENCE FOUNDATION (NSF)

NATIONAL TRANSPORTATION SAFETY BOARD

NUCLEAR REGULATORY COMMISSION (NRC)

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF COMPLIANCE

OFFICE OF GOVERNMENT ETHICS

OFFICE OF PERSONNEL MANAGEMENT

OFFICE OF SPECIAL COUNSEL

OFFICE OF THE NATIONAL COUNTERINTELLIGENCE EXECUTIVE

OVERSEAS PRIVATE INVESTMENT CORPORATION

PANAMA CANAL COMMISSION

PEACE CORPS

PENSION BENEFIT GUARANTY CORPORATION

POSTAL REGULATORY COMMISSION

RAILROAD RETIREMENT BOARD

SECURITIES AND EXCHANGE COMMISSION (SEC)

SELECTIVE SERVICE SYSTEM

SMALL BUSINESS ADMINISTRATION (SBA)

SOCIAL SECURITY ADMINISTRATION (SSA)

TENNESSEE VALLEY AUTHORITY

U.S. TRADE AND DEVELOPMENT AGENCY

UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT

UNITED STATES INTERNATIONAL TRADE COMMISSION

UNITED STATES POSTAL SERVICE (USPS)