

Department of the Interior
Departmental Manual

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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

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4.1 **Purpose.** This chapter provides the requirements for Department of the Interior (DOI ~~or the Department~~) government-to-government consultation between appropriate ~~T~~tribal officials and DOI officials. It expands and clarifies DOI's policy on consultation with Indian 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 Federal laws, rules, statutes, or regulations that guide consultation processes with Indian ~~T~~tribes.

4.3 **Definitions.**

A. Indian Tribe or Tribe. Any American Indian or Alaska Native tribe, band, nation, pueblo, rancheria, village, or community that the Secretary of the Interior acknowledges to exist as an Indian ~~T~~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.~~

B. Action with Tribal Implications. An action by the Department or any of its bureaus or offices that may have a substantial direct effect on one or more Tribes, the relationship between the Federal Government and Tribes, or on the distribution of power and responsibilities between the Federal Government and Tribes. Substantial direct effects on Tribes may include, but are not limited to, effects as shown in the Consensus-Seeking Model (Figure 1).

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Replaces ~~11/09/1542/02/14 #40313993~~

C. Tribal Governance Officer (TGO). An individual designated by DOI to carry out responsibilities described in this chapter.

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

EF. 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 DOI to recognize and fulfill its legal obligations to identify, protect, and conserve Tribal trust resources; carry out its trust relationship with federally recognized Indian Tribes and Tribal members; and invite Tribes to consult with Tribes on a government-to-government basis whenever DOI plans ~~or~~ actions have with Tribal implications. All bureaus and offices shall make good-faith efforts to invite Tribes to consult early in the planning process and throughout the decision-making process and engage in robust, interactive, pre-decisional, informative, and transparent consultation when planning actions with Tribal implications. It is the policy of DOI to seek consensus with impacted Tribes when the action with Tribal implications in accordance with the Consensus-Seeking Model, 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 DOI's consultation efforts to ensure effective government-to-government relationships with Indian Tribes ~~and ANCSA Corporations~~.

(3) Overseeing ~~DOI 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 DOI reporting system to ensure that consultation efforts are documented and properly reported.

B. Assistant Secretaries. Assistant Secretaries are responsible for ensuring that all bureaus and offices within their reporting chain comply with the requirements of this chapter.

C. 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 the consultation activities of their organizations and ensuring compliance with those procedures.

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

DE. TLOs. The 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 in the Tribal Consultation Annual Report of newly engaged national or regional consultation ~~processes~~ with any Indian Tribe ~~or ANCSA Corporation~~ and any updates to bureau/office consultation procedures or processes.

ED. DOI Staff. Any DOI staff who will represent the Department or a bureau or office in consultation (other than note-takers) must first complete training to promote positive relations with Tribes, including training on implementation of this policy and a review of:

(1) The general history of the government-to-government relationship between the Federal Government and Indian Tribes;

(2) The treaty rights of Indian Tribes;

(3) The Federal trust obligation owed to American Indians, Alaska Natives, and Native Hawaiians in the United States;

(4) The culture and history of American Indians, Alaska Natives, and Tribes; and

(5) Existing Tribal consultation policies, government structures, and decision-making processes.

F. 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.

~~G.E.~~ Office of Collaborative Action and Dispute Resolution (CADR). Upon request, ~~t~~The CADR ~~is responsible for assisting~~may assist in planning and facilitating an effective consultation process, negotiated rulemaking, or other collaborative approaches to decision-making.

H. Secretary's Tribal Advisory Committee (STAC). The Secretary will establish, by charter, ~~a~~ STAC consisting of elected Tribal leaders or their designated representatives from each of the 12 Bureau of Indian Affairs Regions. The STAC's purpose is to seek consensus, exchange views, share information, provide advice and/or recommendations or facilitate any other interaction related to intergovernmental responsibilities or administration of DOI programs, including those that arise explicitly or implicitly under treaty, statute, regulation or executive order.

~~F. Joint Federal Tribal Team (Team).~~ The Team is responsible for making recommendations on the implementation of this policy. The Team members should include representatives from DOI 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 DOI'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, DOI 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.

~~4.67~~ **Departmental Database.** A single DOI database will be maintained to manage the contact list for leadership of all Indian ~~T~~tribes ~~and ANCSA Corporations, as defined in paragraph 4.3A and 4.3B respectively 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.

~~4.78~~ **Tribal Consultation Annual Report.** On an annual basis, bureaus/offices shall develop a report of the results of their efforts to promote consultation with Indian ~~T~~tribes. The report is due to the TGO by December 31 of each year. Reporting is intended to be a comprehensive list of all national and regional consultation efforts undertaken that year and may include, but is not limited to, the scope, cost, and activities of the consultation efforts. The bureau/office may also report should also highlight significant-include consultation efforts conducted one-on-one with Indian ~~T~~tribes to highlight successes, challenges, or best practices and when appropriate, ANCSA Corporations. The report should also include proposed plans and recommendations. (The format for the report is provided in the Appendix.)

4.8 Flexibility for Tribal Waivers. For all statutory or regulatory requirements applicable to Tribes that are subject to DOI discretion and waiver, each bureau/office shall streamline processes by which Tribes apply for waivers of those requirements, use flexible policy approaches when reviewing Tribal requests for waivers of those requirements, and render a decision upon a complete application for a waiver within 120 days of receipt of such application, or as otherwise provided by law or regulation. If the application for waiver is not granted, the bureau/office shall provide the Tribal applicant with timely written notice of the decision and the reasons.

Department of the Interior
Tribal Consultation Annual Report

Bureau/Office:

The annual report is a summary of all bureau/office consultations during one fiscal year that were conducted on a nationwide or regional basis and any consultation efforts conducted one-on-one with Indian Tribes that the bureau/office would like to report to highlight successes, challenges, or best practices. The information in the Annual Report is a summary of and should be compiled from all of the information captured during the fiscal year. (Use as much space as needed and include the bureau/office name on each page.)

1. Summarize and list all of the consultation topics.
2. List all of the Tribes consulted.
3. List the location of each consultation by city and state.
4. Summarize and list all of the issues and recommendations.
5. Summarize successes and accomplishments and include recommendations for improvements to the consultation process.

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