

Department of the Interior  
**Departmental Manual**

**Effective Date:** ~~11/09/15~~

**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 the Department of the Interior (DOI) government-to-government consultation between appropriate Tribal officials and DOI officials.

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

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

5.4 **Consultation.**

A. Requirement for Consultation. Bureaus and offices must invite Tribes to consult tribes and ANCSA Corporations whenever a DOI plan or action with Tribal implications arises.

B. Appropriate Representatives at Consultation.

(1) The DOI official with authority to decide on the proposed DOI action with Tribal implications must participate in the consultation.

(2) The elected official of the Tribe, acting in their official capacity as the leader of the Tribe may participate or choose to designate alternate or additional Tribal representatives to participate in the consultation.

C. Coordination. Bureaus/offices will work with each other and with other Federal agencies, where appropriate, to coordinate consultation.

D. Facilitation Support. In planning consultation, bureaus and offices should consider best practices for engagement, including but not limited to, the use of neutral facilitation and other collaborative problem-solving approaches to promote effective dialogue and conflict resolution. Such support is available through the Office of Collaborative Action and Dispute

Resolution (CADR). In the event that the consulting parties encounter an impasse, the parties may utilize the impartial facilitation, mediation, and consensus-building services provided by CADR.

E. Conduct in Consultation. 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 DOI, must be respectful of Tribal sovereignty.

A-F. Confidential or Sensitive Information. 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).

G. Consensus-Seeking Model. The basis of consultation is rooted in meaningful dialogue where the viewpoints of Tribes and DOI, including its bureaus and offices, are shared, discussed, and analyzed. Executive Order 13175 directs agencies to explore and, where appropriate, use “consensual mechanisms” for developing regulations that relate to Tribal self-government, Tribal trust resources, or Tribal treaty or other rights. Executive Order 13175 also establishes criteria for policy-making, including directives to 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 Tribal governments; grant Tribal governments the maximum administrative discretion possible; encourage Tribes to develop their own policies to achieve program objectives; where possible, defer to Tribes to establish standards; and determine whether to establish Federal standards, consult as to the need for Federal standards and any alternatives to preserve the prerogatives and authority of Tribes.

(1) Seeking Consensus. Consistent with the above directives, bureaus and offices should abide by the Consensus-Seeking Model (figure 1) that correlates the degree to which Tribal consensus should be sought based on the degree of impact on the Tribe. The model illustrates that impacts of DOI action closer to the center necessitate increasingly dedicated efforts by DOI officials to achieve consensus and, where possible, defer to Tribes to establish standards. This model may be most useful for one-on-one consultation where impacts are to a single Tribe, or to several Tribes who have among themselves achieved consensus, but DOI officials are encouraged to use the model as a framework for national and regional consultations even where full consensus of all impacted Tribes may not be achievable.

(2) Dispute Resolution. Where consensus cannot be reached for areas outlined in the

consensus model, the head of the bureau or office will review the consultation information and consensus-seeking documentation and make a determination on how to proceed. The Secretary's Tribal Advisory Committee described in 512 DM 5.7 may be called upon to provide review and guidance to the head of the bureau or office.

H. Consultation Session Methods. A eConsultation session methods may include, but are not limited to, in-person meetings, video-conferences, teleconferences, and correspondence to discuss a specific issue. In the case of in-person meetings, video-conferences, and teleconferences, the eConsultation session methods may be expanded upon through subsequent correspondence after consultation is initiated through written notification. DOI will strive to include both in-person and virtual consultation session methods to provide Tribes with access to participate in at least one consultation session for a specific issue, regardless of their travel capabilities. On a case-by-case basis, consultation may be held through a series of written correspondence with the Tribal leadership, but this process of utilizing written correspondence should only be used when other consultation session methods of dialogue are not feasible. Providing notification (the distribution of information from one or more DOI offices) to one or more Tribes of a Departmental action as a stand-alone effort is not consultation. [NOTE: Last sentence moved up from "Initial Planning Stage" below].

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 provide notice to, and ~~begin invite Tribes to~~ consultation with Indian Tribes as early as possible when considering a Departmental DOI action with ~~t~~ 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 DOI offices) to one or more Tribes of a Departmental action as a stand-alone effort is not consultation. [NOTE: Deleted text moved to~~ H. Consultation Session Methods] (The appropriate DOI officials are those individuals who are knowledgeable about the matters at hand, are authorized to speak for a bureau/office, and who 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 to determine if they want to accept the offer and, if so, provide an opportunity to fully engage in ~~the~~ consultation. Adequate notice entails providing:

- (i) a description of the topic(s) to be discussed;
- (ii) The expected scope of the proposed DOI action;
- (iii) The expected purpose of the DOI action;
- (iv) The expected a timeline of the process, and possible outcomes; and
- (v) DOI offices and bureaus that are expected to participate in the consultation and development and implementation of the DOI

action.

~~(2)~~(3) 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.

~~(3)~~(4) If the notice is announcing a scheduled Tribal consultation session, ~~t~~The bureau/office will ensure that ~~public~~ notice to the Tribe(s) is given at least 30 days prior to the first scheduled consultation session. If exceptional circumstances prevent notification within 30 days ~~of the consultation~~, an explanation for the abbreviated notification will be provided in the invitation letter.

(5) If the notice is announcing the opportunity to consult, without a scheduled Tribal consultation session, the notice should give the Tribal leaders at least 30 calendar days (preferably 45 days) to request consultation before DOI action planning proceeds.

(i) A Tribe may request that DOI provide an extension more than 30 days' notice ~~prior~~ to consider whether to request consultation and, at its discretion, DOI may grant such requests.

~~(i)~~(ii) If a bureau/office invites a Tribe to consult but does not receive a response, the bureau/office should make good-faith, 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) A Tribe may request that the DOI initiate consultation when the Tribe believes that a bureau/office is considering a ~~departmental-DOI~~ action with Tribal implications. The appropriate bureau/office ~~TLOTGO~~ or appropriate representative will treat an official request for consultation in an expedited fashion and respond to the Tribe in writing that DOI has received the request, using the most expedient methods to communicate (e.g., by email in addition to U.S. Mail). ~~to the tribe~~

(3) Whenever a Tribe requests consultation the Department will work with the Tribe to schedule the consultation at a mutually agreeable time, usually 30 days in advance.

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, a Tribal leader task force, a series of open Tribal meetings, or single meetings. Bureaus/offices may perform these activities during the Initial Planning Stage, above, as appropriate.

11/09/15 #4032

Replaces 12/02/14 #3994

(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 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.~~ [NOTE: Deleted text was moved up to “Initial Planning” stage, above].

(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, or natural disaster emergencies 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.~~ [NOTE: Deleted text was moved up to 5.4(C)]

C. Record of Consultation. On completion of the consultation period, the head of the DOI bureau/office or their designee must prepare and transmit to the Tribe (or for national and regional consultations or if otherwise appropriate, publish on the website) documentation in a record of consultation that describes:

- (2) A summary of Tribal input received;
- (3) An explanation of how that Tribal input was addressed;
- (4) The reasoning for any instance in which Tribal suggestions were not incorporated into the DOI action or consensus could not be attained.

D. 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 DOI's deliberative process privilege regarding internal considerations or any other applicable privilege.

E. Consultation Summary Report. Upon completion of the consultation, bureaus/offices must prepare a summary of the consultation activities. Information from the summaries should be used to develop the Annual Report described in 512 DM 4.8.

~~5.6—**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 2 years, and each member must be the duly elected tribal leader for the duration of the term appointment, or cede the position at the expiration of the tribal leadership position.~~

~~**B.F.** The DOI officials should engage members of the team to determine what constitutes meaningful consultation to DOI's decisionmaking process. The 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.~~

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

~~**D.**~~

~~**E.G.** Tribal Team members will be elected officers of tribal governments (or their designated employees with authority to act on their behalf) acting in their official capacities in order to comply with the exception of the Federal Advisory Committee Act (5 U.S.C. App.) contained in the Unfunded Mandates Reform Act (Pub. L. 104-4).~~

~~[NOTE: Deleted text replaced with STAC in 512 DM 4].~~