

Department of the Interior Departmental Manual

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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 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. Bureaus and offices must consult tribes and ANCSA Corporations whenever a DOI plan or action with tribal implications arises. 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. 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 the viewpoints of tribes and DOI, including its bureaus and offices, are shared, discussed, and analyzed. A consultation session is, but is 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 consultation may be expanded upon through subsequent correspondence after consultation is initiated. 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 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 provide notice to, and begin consultation 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 DOI offices) to one or more tribes of a Departmental action as a stand-alone effort is not consultation. (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 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 public 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) A tribe may request that DOI provide more than 30 days notice prior to consultation and, at its discretion, DOI may grant such requests.

(3) A tribe may request that the DOI initiate consultation when the 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 DOI has received the request, using the most expedient methods to communicate to the 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 DOI's deliberative process privilege regarding internal considerations or any other applicable privilege.

D. 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 Consultation with Alaska Native Corporation Settlement Act of 1971 (ANCSA) Corporations. When taking Departmental action that has a substantial direct effect on ANCSA Corporations, DOI 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 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.

A. 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.

B. 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.

C. 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).