

U.S. DEPARTMENT OF AGRICULTURE
WASHINGTON, D.C. 20250

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SUBJECT: Tribal Consultation	DATE: April 30, 2024
OPI: Office of Tribal Relations	EXPIRATION DATE: April 30, 2029

<u>Section</u>	<u>Page</u>
1. Purpose	1
2. Special Instructions/Cancellations	1
3. Background	2
4. Scope	3
5. Policy	3
6. Roles and Responsibilities	9
7. Compliance	11
8. Inquiries	12
Appendix A – Acronyms and Abbreviations	A-1
Appendix B – Definitions	B-1
Appendix C – Authorities and References	C-1

1. PURPOSE

This Departmental Regulation (DR) implements the November 30, 2022 [*Memorandum on Uniform Standards for Tribal Consultation*](#), the January 26, 2021 [*Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships*](#), the November 5, 2009 [*Memorandum on Tribal Consultation for the Heads of Executive Departments and Agencies*](#), which directs Federal Departments and agencies to implement [*Executive Order \(E.O.\) 13175*](#), Consultation and Coordination with Indian Tribal Governments, dated November 6, 2000, [*Memorandum for the Heads of Executive Departments and Agencies*](#), April 29, 1994, and in furtherance of the federal government’s unique nation-to-nation relationship with Tribes

2. SPECIAL INSTRUCTIONS/CANCELLATIONS

- a. This DR supersedes:

- (1) DR 1340-007, *Policies on American Indians and Alaska Natives*, dated March 14, 2008;
 - (2) DR 1350-001, *Tribal Consultation*, dated September 11, 2008; and
 - (3) DR 1350-002, *Tribal Consultation, Coordination, and Collaboration*, dated January 18, 2013.
- b. This DR is effective immediately when published and will remain in effect until it is superseded, or it expires.
 - c. The companion Departmental Manual (DM) 1350-002, *Tribal Consultation, Coordination, and Collaboration*, provides Tribal consultation procedures and best practices.

3. BACKGROUND

- a. On April 29, 1994, President William Clinton issued [*Government-to-Government Relations With Native American Tribal Governments*](#), directing each Executive Department and Agency to consult with Tribal governments prior to taking actions that would affect Tribes. On May 14, 1998, President Clinton issued [*E.O. 13084*](#), Consultation and Coordination with Indian Tribal Governments. The identically titled E.O. 13175 revoked and superseded E.O. 13084 on November 6, 2000, and sets forth guidelines for all Federal agencies to:
 - (1) Respect Indian Tribal self-government, determination, 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;
 - (2) Strengthen the United States' nation-to-nation relationships with Tribes; and
 - (3) Establish regular and meaningful consultation and collaboration with Tribal officials in the development of Federal policies that have Tribal implications.
 - (4) Reduce the imposition of unfunded mandates upon Tribes.
- b. On November 5, 2009, President Barack Obama issued [*Memorandum on Tribal Consultation for the Heads of Executive Departments and Agencies*](#) to Heads of Executive Departments and Agencies. The Memorandum directed each Federal agency to submit to the Office of Management and Budget (OMB) a plan of action to implement E.O. 13175, as well as annual progress reports.
- c. On January 26, 2021, President Joseph Biden issued [*Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships*](#). Like President

Obama's Memorandum, President Biden's Memorandum directed each Federal agency to submit to OMB a plan of action to implement E.O. 13175, as well as annual progress reports. USDA developed a [Consultation Action Plan](#) as a result.

- d. On November 30, 2022, President Biden also issued [Memorandum on Uniform Standards for Tribal Consultation](#), which establishes baseline requirements for all federal agency consultation policies.
- e. In Fiscal Year (FY) 2010, the United States Department of Agriculture (USDA or the Department) received appropriations to launch a new Office of Tribal Relations (OTR). The OTR Director's duties include overseeing the Department's policies and processes for consultation per [7 Code of Federal Regulations \(CFR\) § 2.39\(a\)\(3\)](#).

Some Federal statutes and regulations impose specific consultation requirements and duties beyond those addressed in E.O. 13175 (e.g., National Historic Preservation Act (54 U.S.C. § 300101 *et seq.*); Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 *et seq.* and implementing regulations at 43 CFR 10); National Environmental Policy Act of 1970 (42 U.S.C. 4321 *et seq.*) and implementing regulations at 40 CFR Subchapter A); Archaeological Resources Protection Act (16 U.S.C. 470aa *et seq.*).

4. SCOPE

This DR applies to all USDA Mission Areas, agencies, and staff offices.

5. POLICY

- a. Prior to Taking Actions Potentially Involving or Impacting Tribes

- (1) Administrative Discretion

With respect to Federal statutes and regulations administered by Tribal governments, the Department will grant Tribal governments the maximum administrative discretion possible, consistent with federal law, including consideration of waiver requests pursuant to E.O. 13175, Section 6, *Increasing Flexibility for Indian Tribal Waivers*, as described in Section 5(d) of this DR as well as any policies from [E.O. 14112](#), *Reforming Federal Funding and Support for Tribal Nations To Better Embrace Our Trust Responsibilities and Promote the Next Era of Tribal Self-Determination*.

- (a) When formulating and implementing policies that have Tribal implications, the Department will, to the extent practicable and permitted by law:

- 1 Encourage Tribes to develop their own policies to achieve program objectives;
- 2 Where possible, defer to Tribes to establish standards;
- 3 Honor Tribal treaty rights, respect Tribal sovereignty and Tribal jurisdiction; and
- 4 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 Tribes.

(2) Federal Advisory Committee Act (FACA) Exemption

Because duly-elected Tribal leaders, or their designee, engage in consultation through a government-to-government relationship with the United States, formal administrative requirements under FACA, [5 United States Code \(U.S.C.\) §§ 1001-1014](#), do not apply. Additionally, consulting officials are Federal representatives and elected officials of the Tribe, and, therefore, Tribal consultations are not subject to FACA provisions.

- (a) Tribal leaders have the authority to designate an individual as a Tribal leader proxy to represent the Tribe through a proxy letter. Proxy letters are issued for a specific period or based on a consultation depending on the situation.
 - (b) The proxy letters must become part of the consultation record.
- (3) Mission Areas, agencies, and staff offices will work collaboratively with the Tribes in their respective States or regions on the development of consultation, listening sessions, or other engagement. A representative designated by Mission Area, agency, or staff office leadership should develop protocols for consultation with the Tribes in their respective States or regions and should establish regular, meaningful consultation and collaboration relationships.

If authority is delegated from one USDA consulting official to a different designated USDA staff member, then:

- (a) Designated staff and Mission Areas, agencies, and staff offices will work with the Tribes to identify Tribal organizations that can assist in working with Tribes in planning Tribal consultations; and
- (b) Designated staff and Mission Areas, agencies, and staff offices will work collaboratively to facilitate Tribal-State relations regarding USDA programs and services as they affect Tribes and American Indians/Alaska Natives (AI/AN).

b. Negotiated Rulemaking

On issues that arise relating to Tribal self-governance, Tribal self-determination, Tribal trust resources and assets, Tribal treaty and other rights, Mission Areas, agencies, and staff offices will explore, where appropriate and in consultation with the Office of the General Counsel, using consensual mechanisms for developing regulations, including negotiated rulemaking.

c. Policy Burden on Tribes

(1) To the extent practicable and permitted by law, no USDA Mission Area, agency, or staff office will submit proposed legislation or promulgate any regulation or policy that has Tribal implications, imposes substantial direct compliance costs on Tribes, is not required by Federal statute, or preempts Tribal law unless:

(a) Funds necessary to pay the direct costs incurred by the Tribe in complying with the regulation or policy are provided by the Federal Government; or

(b) The Mission Areas, agencies, and staff offices, prior to the formal promulgation of the regulation or policy, has:

1 Consulted with Tribal officials early in the process of developing the proposed regulation or policy;

2 Provided a Tribal summary impact statement in a separately identified portion of the of the preamble to the regulation as it is to be issued in the Federal Register, which consists of a description of the Mission Area's, agency's, staff office's prior consultation with Tribal officials, a summary of their concerns, the Mission Area's, agency's, and staff office's position supporting the need to issue the regulation or policy, and a statement of the extent to which the concerns of Tribal officials have been met; and

3 Made available to the Secretary and the Director of OMB any written communications submitted to the Mission Area, agency, or staff office by Tribal officials.

(2) Congressional testimony and other public-facing policy positions which potentially impact tribes pursuant to 5(c)(1) will take Tribal perspectives and consultation into account.

d. Tribal Waivers

(1) Per E.O. 13175, Section 6, each Mission Area, agency, and staff office within USDA must, to the extent practicable and permitted by law, consider any application by an Indian Tribe for a waiver of discretionary statutory or regulatory

requirements in connection with any program administered by the Mission Area, agency, or staff office. This consideration will be with a general view toward increasing opportunities for utilizing flexible policy approaches at the Tribal government level in cases in which the proposed waiver is consistent with the applicable Federal policy objectives and is otherwise appropriate.

- (2) The Tribal leader making the request will send in writing (which includes email) the following:
 - (a) The name of the Tribal government making the request;
 - (b) The name of the statutory or regulatory requirement for which the waiver is requested;
 - (c) The stated reason for requesting the waiver;
 - (d) A signature of the Tribal official making the request.
- (3) USDA must, to the extent practicable and permitted by law, render a decision upon a complete application for a waiver that includes all of the elements from Section 5(d)(2), or as otherwise provided by law or regulation.
- (4) If the application for waiver is not granted, USDA must provide the applicant with timely written notice of the decision and the reasoning.
- (5) Section 5d of this DR applies only to statutory or regulatory requirements that are discretionary and subject to waiver by USDA.
- (6) Each Mission Area head is encouraged to build upon Section 5d of this DR with any specifics for your Mission Area.

e. When Consultation Occurs:

(1) USDA Initiated

The opportunity to consult must occur when a proposed regulation, policy, budget action, or other USDA action (e.g., infrastructure projects, directives, funding set-asides) could have Tribal implications. This could include implications for Tribes that involve their government-owned corporations, Tribal jurisdiction, and Tribal lands.

- (a) If the issue only affects one specific Tribe or a specific number of Tribes, then consultation will occur with the affected Tribe(s).

- (b) If the program is a nationwide program, then USDA will invite Tribal leaders from all federally-recognized Tribes impacted by the program or policy.

(2) Tribal Leader Initiated

- (a) Tribal leaders can also request consultation regarding a regulation, policy, budget action, or other USDA action that they believe may have Tribal implications. Once this occurs, the appropriate Mission Area, agency, or staff office must then:
 - 1 Consider, or reconsider if an evaluation already took place, if there are Tribal implications;
 - 2 Determine if consultation has already occurred;
 - 3 Determine if an issues or concerns raised by a Tribe regarding the regulation, policy, budget action, or other USDA action could be resolved with a meeting, coordination, or collaboration rather than a formal consultation;
 - 4 Advise the Tribal leader(s) of their decision, in coordination with OTR.
- (b) Absent a very significant reason to the contrary, requests for consultation should be granted.

f. Who Can Serve as Consulting Officials:

(1) USDA Consulting Officials

The consulting official should be a senior-level official with the statutory or delegated authority to make decisions on the regulation, policy, or other USDA action in question. All USDA officials charged with consultation must complete the Tier 1 trainings, as stated in DM 1350-002, and any other trainings required by the Department.

(2) Tribal Consulting Officials

Only elected leadership or their designated representative(s) can represent Tribes at consultations. Delegations of authority from Tribal leaders must be in writing, signed by the elected delegating official, and given to USDA prior to the consultation. If an official is in a non-elected position but was appointed permanently to a position by a Tribal leader in that subject area, then a written delegation of authority is not required.

g. Notification to Tribal Leaders:

(1) Notice

- (a) Notice will be at least 30 calendar days in advance of date, on which the consultation will occur in writing, and addressed to Tribal leaders.
- (b) If at least 30 calendar days' notice cannot be given due to an emergency or extenuating circumstance, then the reason for the shortened notice will be provided in the notice, and OTR will be notified.

(2) Proxy Form

Notice will also contain a proxy letter template for Tribal leaders to assign their consulting official capacity to a proxy.

(3) Supporting Documentation

- (a) Supporting documentation, such as the agenda, copies of the regulation, policy, or USDA action being consulted, and a framing paper, will be sent to Tribal leaders at least 14 calendar days before the consultation date.
- (b) If at least 14 calendar days' notice cannot be given due to an emergency or extenuating circumstance, then the reason for the shortened notice will be provided in the notice, and OTR will be notified.

h. Religious Freedom

USDA will comply with the *American Indian Religious Freedom Act*, [P.L. No. 95-341](#). USDA further recognizes that such resources may hold a unique meaning in the spiritual as well as everyday life of many AI/AN and Native Hawaiians.

i. Conflict Resolution

A Tribe may seek conflict resolution through OTR when:

- (1) A Tribe engaged in consultation believes that USDA or its Mission Areas, agencies, or staff offices have not adequately considered the needs, desires, or requests of the Tribe; or
- (2) A Tribe has determined that USDA or its Mission Areas, agencies, or staff offices should engage with them in consultation, and USDA has not done so.

j. After Consultations

- (1) If there is a regulation USDA is promulgating, the preamble to the regulation must contain a discussion of the consultation(s) that occurred, the comments received, and how the Mission Area, agency, or staff office addressed the comments received during consultation. How Mission Areas, agencies, or staff offices incorporate consultation items into the Mission Area, agency, or staff office action will depend on the nature of the critical triggering event.
- (2) Tribal governments will have at least 1 month after the consultation to submit written comments for the consultation record.
- (3) Feedback from Tribal representatives provided through consultation does not have to be incorporated, but Mission Areas, agencies, or staff offices must take the Tribes' views, information, rights, and interests on policy implications into serious and deliberative consideration. Consultation should be part of a larger effort to cooperate and collaborate in good faith with Tribal nations. Consultation and collaboration with Tribes help the USDA better serve Tribal and rural communities.

k. Consultation and Meetings with ANCs, Native Hawaiians, and Non-Federally Recognized Tribes

Tribal government nation-to-nation consultation only occurs with federally recognized Tribal governments; however, USDA leadership must also meet with Alaska Native Corporations (ANC)) Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, Div. II. § 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.) USDA may also meet with Native Hawaiian Organizations and non-federally recognized Tribes to discuss regulations, proposed legislation, and policy recommendations that have implications for these groups, using the same impact measures which trigger consultation with federally recognized Tribes.).

6. ROLES AND RESPONSIBILITIES

a. The OTR Director will:

- (1) Be the designated USDA official responsible for Departmentwide implementation and monitoring of E.O. 13175, E.O. 14112, relevant Presidential Memoranda and Executive Orders, and this DR;
- (2) Periodically provide information to the Secretary, Under Secretaries, Assistant Secretaries, agency Administrators, and staff office Directors on agency compliance with reporting requirements and data;

- (3) Report directly to the Secretary on all Tribal consultation matters and work across the Department with each Mission Area, agency, and staff office to improve customer engagement, maximize efficiency, and improve Mission Area, agency, and staff office collaboration;
- (4) Facilitate communication regarding USDA initiatives as they relate to Tribal governments;
- (5) Provide, as necessary, technical assistance to Mission Areas, agencies, and staff offices on consultation matters like logistical aspects of consultation, including consulting official briefings, room reservation, and compiling a list of attendees;
- (6) Act as the coordinating officer working across all Mission Areas, agencies, and staff offices of the Department in order to maximize the effectiveness and efficiency of joint, shared, and regional consultation events;
- (7) Identify consultation opportunities with other Federal partners and invite other Departments, Federal agencies, and offices to attend and participate in USDA-hosted consultation events, as appropriate;
- (8) As appropriate, attend and participate in consultations hosted by other Federal agencies or have staff attend on behalf of the OTR Director;
- (9) Document and follow-up with participating Mission Areas, agencies, and staff offices on any unresolved issue that would benefit from ongoing involvement of Tribes upon completion of each consultation session;
- (10) Consult periodically with Tribal leaders or their designated representatives on the execution of USDA Tribal consultation policy to ensure effective and meaningful participation and implementation;
- (11) Inform Tribes and other stakeholders about the USDA's Tribal consultation policy by conducting meetings, roundtables, teleconferences, and forums; participating in national and regional AI/AN-focused conferences; and placing information on the [*Office of Tribal Relations website homepage*](#) and other websites as appropriate;
- (12) Advise and oversee the development or modification of USDA Mission Area, agency, and staff office-specific policies and processes for consultation;
- (13) Per [*DR 0100-001*](#), *Departmental Directives System*, Section 9c(12), review this DR at least annually, and per Section 4a(1) revise or reissue this DR at least every 5 years to ensure USDA remains aligned with current applicable statutory, regulatory, and policy requirements; and
- (14) Draft, finalize, and submit to OMB USDA's Annual Consultation Progress Report, as required in section 3c.

b. USDA Mission Area, Agency, and Staff Office Heads will:

- (1) Designate a point of contact 30 calendar days after the effective date of this DR to handle consultation-related issues;
- (2) In coordination with OTR, develop a consultation policy and waiver policy that aligns with this DR;
- (3) Identify and notify OTR of possible regulations, policies, or other USDA actions on an ongoing basis that have possible Tribal implications before they are put into place and when there is still an opportunity to engage in meaningful consultation;
- (4) Notify, in coordination with OTR, Tribal leaders of consultations 30 calendar days prior to consultation date;
- (5) Compile, share with OTR, and maintain the record for their consultations within 30 days of any consultation, which includes:
 - (a) Any invitations, letters, templates, or supporting materials sent to Tribal leaders;
 - (b) List of attendees;
 - (c) Delegation of authority letters;
 - (d) Agenda;
 - (e) Minutes, recordings, transcripts, or notes;
 - (f) Follow-up items;
 - (g) How the Mission Area, agency, or staff office considered input from the Tribe; and
 - (h) Any other documents related to the consultation.

c. USDA Consulting Officials and Designees will:

- (1) Be an official with the statutory or delegated authority to make decisions on the regulation, policy, or other USDA action in question; and
- (2) Complete the Tier 1 trainings, as stated in DM 1350-002.

7. COMPLIANCE

The OTR Director will ensure compliance with [DR 1110-002](#), *Management's Responsibility for Internal Control* through regular discussions and review with Mission Areas and agencies.

8. INQUIRIES

USDA Mission Areas, agencies, and staff offices will direct questions and inquiries regarding this DR to OTR via email at Tribal.Relations@usda.gov.

-END-

APPENDIX A

ACRONYMS AND ABBREVIATIONS

AI/AN	American Indian/Alaska Native
ANC	Alaska Native Corporation
ANCSA	Alaska Native Claims Settlement Act
CFR	Code of Federal Regulations
DG	Departmental Guidebook
DM	Departmental Manual
DR	Departmental Regulation
E.O.	Executive Order
FACA	Federal Advisory Committee Act
FY	Fiscal Year
OMB	Office of Management and Budget
OTR	Office of Tribal Relations
P.L.	Public Law
U.S.C.	United States Code
USDA	United States Department of Agriculture

APPENDIX B

DEFINITIONS

Agency. Organizational units of the Department, other than staff offices, whose heads report to officials within the Office of the Secretary, Deputy Secretary, Under Secretaries, Assistant Secretaries, and Assistant to the Secretary. (Source: USDA, [DG 0100-002](#), *USDA Departmental Directives Definitions Glossary*)

Alaska Native Corporation (ANC). Any Alaska Native village or regional corporation established pursuant to the *Alaska Native Claims Settlement Act* (ANCSA), [P.L. No. 92-203](#). (Source: [43 U.S. Code Chapter 33](#))

Consultation. Tribal consultation is the timely, meaningful, and substantive dialogue between USDA officials who have delegated authority to consult, and the elected leadership of federally recognized Tribes or their designated representative(s), pertaining to USDA policies that may have Tribal implications.

Mission Area. A group of agencies with related functions that report to the same Under or Assistant Secretary. Research, Education, and Economics (REE) is an example of a Mission Area. (Source: USDA, DG 0100-002)

Policies with Tribal Implications. 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, treaty rights, Tribal jurisdiction, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

Staff Office. Departmental administrative offices whose heads report to officials within the Office of the Secretary. (Source: USDA, DG 0100-002)

Tribal Corporation, or Tribal Government Owned Corporation. A corporate entity owned by a federally recognized Tribal government and formed under federal, state, or tribal law which usually participates in the private marketplace, but the income is Tribal governmental revenue.

Tribal Jurisdiction. An area over which a Tribal government has criminal, civil, tax and/or regulatory authority.

Tribal Land. Tribal land is inclusive of, but may not be limited to:

- a. All land within the limits of any Indian reservation under the jurisdiction of a Tribe and/or the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation;
- b. All dependent Indian communities within the borders of the United States;

- c. All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same; and
- d. All land owned by a federally recognized Tribal government over which they exert Tribal jurisdiction.

Tribe, Federally Recognized Tribe, or Tribal Government. An American 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. § 5131](#). (Source: E.O. 13175)

APPENDIX C
AUTHORITIES AND REFERENCES

[7 CFR § 2.39](#), *Director, Office of Tribal Relations*

[5 U.S.C. §§ 1001-1014](#), *Federal Advisory Committee Act*

[25 U.S.C. § 32](#), *Native American Graves and Repatriation*

[25 U.S.C. § 5131](#), *Indian Tribe List Act of 1994*

[42 U.S.C. § 1996](#), *American Indian Religious Freedom Act* ([P.L. 95-341](#), August 11, 1978)

[43 U.S.C. § 1601 et seq.](#), *Alaska Native Claims Settlement Act* (ANCSA) ([P.L. 92-203](#), December 18, 1971)

[54 U.S.C. § 300101 et seq.](#), *The National Historic Preservation Act*

USDA, [DG 0100-002](#), *USDA Departmental Directives Definitions Glossary*, September 26, 2018

USDA, DM 1350-002, *Tribal Consultation*, forthcoming

USDA, [DR 0100-001](#), *Departmental Directives System*, January 4, 2018

USDA, [DR 1110-002](#), *Management's Responsibility for Internal Control*, March 5, 2021

USDA, OTR, [USDA Consultation Action Plan](#), January 26, 2021

USDA, OTR, [Office of Tribal Relations](#) website

White House, [E.O. 12866](#), *Regulatory Planning and Review*, September 30, 1993

White House, [E.O. 13084](#), *Consultation and Coordination with Indian Tribal Governments*, May 14, 1998; superseded by E.O. 13175 on November 6, 2000

White House, [E.O. 13175](#), *Consultation and Coordination with Indian Tribal Governments*, November 6, 2000

White House, [E.O. 14112](#), *Reforming Federal Funding and Support for Tribal Nations To Better Embrace Our Trust Responsibilities and Promote the Next Era of Tribal Self-Determination*, December 6, 2023

White House, [Memorandum for the Heads of Executive Departments and Agencies](#), April 29, 1994

White House, [Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships](#), January 26, 2021

White House, [Memorandum on Uniform Standards for Tribal Consultation](#), November 30, 2022

White House, [Presidential Memorandum on Tribal Consultation](#), November 5, 2009