

CONSULTATION AND COORDINATION WITH TRIBAL NATIONS

I. Purpose

This Directive and its accompanying Instruction 071-04-001, "Implementing Consultation and Coordination with Tribal Nations," create an accountable process for the Department of Homeland Security's implementation of Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments," consistent with the Presidential Memorandum of January 26, 2021, "Tribal Consultation and Strengthening Nation to Nation Relationships." This Directive serves as the Department's Tribal Consultation Policy and outlines DHS Component responsibilities.

This Directive also implements requirements for consultation with Alaska Native Corporations formed under the Alaska Native Claims Settlement Act, as required under Pub. L. 108-99, 118 Stat. 3, 452, Div. H § 161 (2004), as amended by Pub. L. 108-447, 118 Stat. 2809, 3267, Div. H, Tit. V § 518.

Additionally, this Directive implements the requirements stipulated in Section 706, "Improved Coordination with Tribal Governments" of the Coast Guard Authorization Act of 2010."

II. Scope

This Directive applies throughout the Department. To the degree that any Components have Component-specific Tribal Consultation policies, such policies must meet the standards outlined in this Directive. The DHS Tribal Consultation Policy of July 29, 2015 is superseded and rescinded.

III. Authorities

- A. Public Law 111-281, Coast Guard Authorization Act of 2010.
- B. Public Law 108-447, Consolidated Appropriations Act, 2005.
- C. Public Law 103- 454, Federally Recognized Indian Tribe List Act of 1994.

- D. Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. § 1601 et seq.
- E. Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments* (2000)
- F. Executive Order 13647, *Establishing the White House Council on Native American Affairs* (2013)
- G. Presidential Memorandum of January 26, 2021, Tribal Consultation and Strengthening Nation to Nation Relationships.
- H. DHS Delegation Number 24001, Rev. 00, "Delegation to the Assistant Secretary for Partnership and Engagement," December 1, 2020.
- I. DHS Designation Number 00-24002, Rev. 02, "White House Council on Native American Affairs," May 8, 2021.
- J. DHS Designation Number 00-24012, Rev. 00, "Designation of the Assistant Secretary of the Office of Partnership and Engagement as the Official with Principal Responsibility for Implementation of Executive Order 13175", June 13, 2022.

IV. Responsibilities

- A. **Assistant Secretary for Partnership and Engagement** serves as the Secretary's senior advisor on Tribal Nation intergovernmental relations and the principal official responsible for the Department's tribal consultation and coordination efforts as outlined herein. The Assistant Secretary has adjudication authority of appeals to waiver requests brought to the Secretary under Executive Order 13175.
- B. **Deputy Assistant Secretary, Office of Intergovernmental Affairs** ensures and supports Department-wide implementation of this Directive and implementing Instruction. The Deputy Assistant Secretary is the Department's Designated Representative on the White House Council on Native American Affairs.
- C. **Component Heads** establish Component tribal consultation policies as appropriate and as necessary to meet other consultation requirements outside of those addressed in this Directive. Component Heads designate, in the manner determined by the Component, tribal consultation officials with authority to speak on behalf of, and bind, the Component when in consultation with tribal leaders or their representatives.

V. Policy and Requirements

A. Policy:

1. The United States Government has a unique legal and political relationship with American Indian and Alaska Native Tribal Nations as outlined in the Constitution of the United States, treaties, statutes, court decisions, executive orders, and memoranda. The United States recognizes the rights of Federally Recognized Indian Tribes to self-governance and self-determination. Indian tribes exercise inherent sovereign rights and governance over their members and their territories.
2. The Department commits to strengthening government-to-government relationships between the United States and Tribal Nations. The Department recognizes that its policies, programs, and services may directly or indirectly impact Tribal Nations. The Department further commits regular and meaningful consultation with Tribal Nations and Alaska Native Corporations (ANCs) regarding its policies, programs, and services that directly or indirectly impact Tribal Nations in an effort to work toward free, prior, and informed consent on matters that may have tribal implications.
3. The Department commits to upholding the federal trust responsibility to Tribal Nations and adhering to the various treaties and agreements made between the governments.

B. Requirements:

1. All Component Heads that have programs that interact with Tribal Nations, citizens of Tribal Nations, or that may have tribal implications designate a full-time tribal government affairs practitioner or dedicated point of contact for tribal relations.
2. All consultations with Tribal Nations are conducted in a deliberative process by a designated Tribal Consultation Official who is a representative of the federal government who has been delegated decision making authority over the issues covered in the consultation. The Tribal Consultation Official gives notice of consultation to potentially interested Tribal Nations and ANCs, and facilitates meaningful engagement and adjudication of substantive input from participants. A Tribal Consultation Official must be at the

Deputy Assistant Secretary level or above for Headquarters Components and at an equivalent Deputy level or above for Operational Components. Consultation Officials are designated by Component Heads or the Secretary.

3. A Tribal Nation may submit a written appeal of a Component waiver denial determination to the Secretary. The Assistant Secretary for Partnership and Engagement, in consultation with Component Heads and at the behest of the Secretary, coordinates evaluation and adjudication of the appeal and provides a response to the Tribal Nation within 20-days of receipt. Note: Notwithstanding the availability of this appeals process to contest waiver denials, nothing shall preclude Tribes from appealing directly to the President where appropriate, such as with respect to waiver requests concerning the Robert T. Stafford Disaster Relief and Emergency Assistance Act, nor shall this process preclude Components from providing, where appropriate, information regarding appeals made directly to the President.

C. **General Provisions:**

1. The Department periodically consults with Tribal Nations and Alaska Native Corporations to review the effectiveness of this Directive and make revisions, as necessary. This consultation occurs at least every three years.
2. This Directive focuses on strengthening government-to-government relationships, communications, and mutual cooperation between the Department and Tribal Nations. It is not intended to, and does not create any right to, administrative or judicial review, or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other persons.
3. This Directive does not replace or change any existing obligations of the Department under the National Environmental Policy Act, the National Historic Preservation Act of 1979, or the Archaeological Resources Protection Act.

VI. Questions

Address any questions or concerns regarding this Directive to the Office of Partnership and Engagement.

**RANDOLPH D
ALLES**



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R.D. Alles

Date

Senior Official Performing the Duties of the
Under Secretary for Management