

U.S. Environmental Protection Agency
Plan for Implementing the Policies and Directives of Executive Order 13175:
Consultation and Coordination with Indian Tribal Governments

The U.S. Environmental Protection Agency (EPA) is committed to honoring tribal sovereignty and including tribal voices in policy deliberations, as called for in President Biden's January 26, 2021 memorandum on Nation-to-Nation relationships with American Indian and Alaska Native Tribal Nations. EPA has a long history of engagement and consultation with tribal governments. In 2011, it was among the first federal agencies to issue a tribal consultation policy, and in the 10 years since the policy was issued EPA has conducted more than 680 tribal consultations. Implementation of EPA's consultation policy remains a top priority for the Agency. EPA strives to learn from its past consultations and ongoing engagements with federally recognized Indian tribes. This plan, which builds upon EPA's existing policies and practices, identifies current and future actions the Agency is taking to meet the directives of Executive Order 13175 and to build on and strengthen its consultation policies and practices.

I. Introduction

In his January 26, 2021 memorandum, [*Tribal Consultation and Strengthening Nation-to-Nation Relationships*](#), President Biden affirmed (1) respect for tribal sovereignty and self-governance, (2) commitment to fulfilling federal trust and treaty responsibilities to tribal nations, and (3) regular, meaningful, and robust consultation with tribal nations as cornerstones of federal Indian policy. The memorandum also reaffirmed both [*Executive Order \(EO\) 13175: Consultation and Coordination with Indian Tribal Governments*](#), which requires all federal agencies to engage in regular and meaningful tribal consultation in formulating or implementing policies that have tribal implications, and the November 2009 [*Presidential Memorandum on Tribal Consultation*](#), which requires each federal agency to implement the policies and directives of EO 13175.

The 2021 memorandum directs federal agencies to submit a detailed plan of actions that agencies will take to implement the policies and directives of EO 13175, developed in consultation with tribal nations and tribal officials, within 90 days of the date of the presidential memorandum (April 26, 2021).

II. Consultation and Coordination Process for Developing EPA's Plan for Implementing EO 13175

In accordance with this directive, EPA held a tribal consultation and coordination period from March 1 - 31, 2021, to obtain tribal input on improving implementation of its consultation policies and practices, pursuant to the policies and directives of EO 13175. EPA received 27 written comment letters from tribes and tribal organizations as part of the tribal consultation and coordination process and one letter from the State of Hawaii, Office of Hawaiian Affairs. During the consultation and coordination period, EPA held two national tribal webinars and listening sessions on March 15 and March 17, 2021, which were attended by more than 130 participants. The webinars were held to discuss EPA's current consultation policies and practices, identify future actions the Agency is developing to improve on its existing consultation work, and seek input on opportunities to strengthen its consultation policies and practices moving forward. Additionally, EPA staff briefed four EPA Tribal Partnership Groups and

Regional Tribal Operations Committees (RTOCs) during the consultation and coordination period, at the groups' request, recording feedback provided by tribal representatives at those meetings.

When developing this *Plan for Implementing the Policies and Directives of Executive Order 13175*, EPA reviewed and carefully considered all comments and input provided during the consultation and coordination process. Based on key comment themes that emerged from the tribal input received, EPA is taking action to strengthen our consultation policies and practices and the implementation of those policies and practices, as discussed below.

III. Actions to Strengthen EPA Consultation Policies and Practices

EPA has a number of policies and practices currently in place to implement EO 13175 and provide for regular, meaningful consultation for Agency actions that may affect tribes. These policies and practices are discussed in detail below in Section IV of this plan. EPA recognizes that consultations are often complicated processes, and the Agency strives to learn from its past consultations and ongoing engagements with tribes as it continues work to strengthen its consultation practices. Building from the Agency's current policies and practices and based on the feedback that EPA received during the consultation and coordination process, the Agency will:

- 1) Convene an Agency workgroup to identify options and recommendations to address key comments raised by tribes during the consultation and coordination process.** This Agency workgroup will be convened and managed by EPA's American Indian Environmental Office and be comprised of headquarters and Regional office EPA Tribal Consultation Advisors. Utilizing the consultation input received and building from EPA's existing consultation policies and practices, the workgroup will develop options and recommendations for EPA leadership by December 31, 2021, on how best to address these comments. During this process, EPA will continue to outreach to and engage tribes as it works to review and respond to the consultation input it received.

The workgroup will focus on addressing several key comment themes heard from tribes in the consultation, including concerns that:

- In general, EPA does not provide a sufficient amount of time for tribes to meaningfully and effectively consult on Agency actions or adequate time to receive consultation notification prior to the start of consultation meetings and/or listening sessions.
- EPA's definition of consultation should be broadened, and additional requirements should be put in place to ensure policies, rules, and decisions fully consider and address the concerns of tribal nations.
- Consultation often can feel like a "check the box" exercise, with a decision already made by the time consultation occurs, and/or consultations can feel like an early comment period opportunity and not a consultation opportunity.
- Better coordination and communication are needed among multi-agency consultation actions with improved tribal involvement.
- Comprehensive training on tribal governments and their unique status (as distinct from the status of states and local governments), the nation-to-nation relationship, federal trust and treaty obligations, and appropriate consultation protocols is needed for EPA staff and both senior and career leadership.

- Improvements can be made to EPA's [Tribal Consultation Opportunities Tracking System \(TCOTS\) website](#) and email listserv to enhance Agency outreach on consultation opportunities.
- EPA decisionmakers do not consistently participate in consultation meetings.
- EPA needs to strengthen its follow up procedures with tribes after consultation.

Priority action: EPA reinforces that it is critical to have appropriate senior leadership involved in tribal consultation meetings. A focus area of EPA's workgroup will be to recommend uniform criteria and practices across the Agency for identifying appropriate senior EPA officials to attend tribal consultation meetings. This addresses a key comment expressed by a number of tribes.

2) Provide enhanced consultation training for EPA Tribal Consultation Advisors. All new EPA personnel receive a mandatory training entitled *Working Effectively with Tribal Governments*. To supplement this training, EPA will develop and provide enhanced training for Tribal Consultation Advisors to ensure they have the training and support that they need to effectively implement the Agency's consultation policies and practices. This training will allow Tribal Consultation Advisors to receive regular updates and an opportunity to discuss best practices and lessons learned regarding the consultation and coordination process. The training will be led by EPA's American Indian Environmental Office and will be initiated this year.

IV. Current Consultation Policies and Practices

EPA has a long history of engagement with tribal governments and is committed to respecting tribal sovereignty and the nation-to-nation relationship in the consultation process. In 1984, EPA was one of the first federal agencies to establish its own Indian Policy specifying how it would interact with tribal governments and consider tribal interests in carrying out its programs to protect human health and the environment. The [EPA Policy for the Administration of Environmental Programs on Indian Reservations](#) (1984 Indian Policy) identifies nine basic principles for implementing EPA's programs where they impact Indian reservations and tribal interests. These principles include that EPA will work directly with tribal governments on a "government-to-government" basis; that it will recognize tribal governments as the primary parties for setting standards, making environmental policy decisions, and managing programs for reservations, consistent with EPA standards and regulations; and in keeping with the federal trust responsibility, will ensure that tribal concerns and interests are considered whenever EPA's actions and/or decisions may affect tribes.

As described in this section, EPA's current consultation practices set forth in the EPA [Policy on Consultation and Coordination with Indian Tribes](#) (Consultation Policy) establish the process for the Agency to identify actions or decisions appropriate for consultation, notify appropriate tribes of the possibility to consult with EPA, and describe how the Agency will receive and respond to consultation and coordination input. Among other actions, EPA has established a system (i.e., Tribal Consultation Opportunities Tracking System) to allow for nationwide notification of consultation opportunities and has created internal reporting measures to ensure that the Agency considers tribal input and emphasizes the importance of tribal consultation. As described in the previous section, EPA will take action to review, improve, and/or modify the implementation of our consultation and coordination practices considering the extensive feedback received during the March 1 – 31, 2021 consultation.

EPA's Policy on Consultation and Coordination with Indian Tribes

In response to the 2009 presidential memo requiring agencies to submit plans to implement EO 13175, in May 2011, EPA was among the first federal agencies to issue a tribal consultation policy. The EPA Consultation Policy established national guidelines and institutional controls for consultation across EPA. It was finalized after extensive consultation and coordination with tribes and a public comment period. The goal of the Consultation Policy was to fully implement EO 13175 as well as EPA's 1984 Indian Policy.

The Consultation Policy is designed to fulfill the Agency's obligation to consult with tribes in accordance with EO 13175, but importantly establishes a broader standard regarding the type of Agency actions and activities that may warrant consultation. The Consultation Policy describes consultation as a process of meaningful communication and coordination between EPA and tribal officials that begins prior to EPA taking actions or implementing decisions that "may affect tribes." This broader standard is drawn from EPA's 1984 Indian Policy, which states that "tribal concerns and interests are considered whenever EPA's actions and/or decisions may affect" tribes.

In addition to EPA's Consultation Policy, some of EPA regional and headquarters offices have developed additional procedures to tailor and assist in implementation of the *EPA Policy on Consultation and Coordination with Indian Tribes*.

Four-Phase Consultation Process: The Consultation Policy outlines a four-phase consultation process, that includes: identification, notification, input, and follow up.

- **Identification:** During this phase, EPA identifies activities that may be appropriate for consultation. To help identify, plan for, and coordinate EPA consultation actions across the Agency, OITA's American Indian Environmental Office (AIEO) conducts an internal semi-annual planning process whereby EPA headquarters and regional offices are asked to review planned activities to determine whether consultation may be appropriate and to report this information to AIEO. This semi-annual reporting process is conducted to help maximize coordination of consultation planning and execution among offices, affording additional lead time for preparation and planning. Additionally, as outlined in EPA's Consultation Policy, in addition to EPA's ability to determine what requires consultation, tribal officials have the ability to request to consult on Agency actions.
- **Notification:** During this phase, EPA notifies tribe(s) of activities that may be appropriate for consultation. Per the 2011 Consultation Policy, notification should occur sufficiently early in the process to allow for meaningful input by the tribe(s) and can occur in a number of ways depending on the nature of the activity and the number of tribes potentially affected. EPA notifies tribes of consultations through several methods. EPA programs send official consultation notification letters to the leadership of tribal governments that may be affected by a given action using the contact information maintained in the Bureau of Indian Affairs' Tribal Leaders Directory,¹ which a number of headquarters and regional offices verify and supplement using information that they independently collect. Additionally, EPA maintains a [Tribal Consultation Opportunities Tracking System \(TCOTS\) website](#), which provides public access to current EPA consultation opportunities, with the information

¹ Bureau of Indian Affairs' Tribal Leaders Directory (<https://www.bia.gov/tribal-leaders-directory>).

needed for tribes to actively engage EPA on those actions. In addition to accessing the TCOTS site directly, tribal representatives can sign up to receive email updates every time the Agency announces a consultation opportunity. Additionally, to assist the Agency in communicating with tribal environmental programs, EPA maintains email lists for tribal environmental and natural resource directors to assist EPA programs when communicating tribal consultation and engagement information, and also distributes consultation information to relevant EPA [Tribal Partnership Groups](#) and Regional Tribal Operations Committees, as appropriate.

- **Input:** During this phase, tribes provide input to EPA on the consultation matter. While tribes always have the option and are encouraged to submit written comments during the consultation and coordination process, as outlined in the 2011 Consultation Policy, this phase may include “a range of interactions including written and oral communications including exchanges of information, phone calls, meetings, and other appropriate interactions depending upon the specific circumstances involved. EPA coordinates with tribal officials during this phase to be responsive to their needs for information and to provide opportunities to provide, receive, and discuss input.”
- **Follow-up:** During this phase, EPA provides feedback to the tribes(s) involved in the consultation to explain how their input was considered in the final action. As indicated in the 2011 Consultation Policy, “this feedback should be a formal, written communication from a senior EPA official involved to the most senior tribal official involved in the consultation.” To help ensure that EPA is appropriately following up with tribes on consultation actions and is tracking this information, beginning in FY20, AIEO began requiring headquarters and regional offices to document consultation outcomes in order to administratively close out consultation records in TCOTS. The information being tracking includes: (1) confirmation of tribal participation; (2) confirmation of whether a tribe(s) submitted written input, and (3) a summary of how EPA addressed tribal input. Since FY20, the Agency has had monthly internal reporting metrics to track this follow-up phase of tribal consultation and help ensure that headquarters and regional offices are documenting these consultation outcomes in TCOTS.

Designated Consultation Roles & Responsibilities: To effectively implement EPA's consultation policies and practices, the 2011 Consultation Policy designates consultation roles and responsibilities for managers and staff across the Agency. Pursuant to EO 13175, EPA's Consultation Policy designates the EPA Assistant Administrator (AA) for the Office of International and Tribal Affairs (OITA) as EPA's Designated Consultation Official. EPA's Designated Consultation Official is responsible for coordinating and implementing tribal consultation across EPA and certifying compliance with EO 13175 for applicable EPA activities, as discussed below. Additionally, per the 2021 presidential memorandum, the Designated Consultation Official will coordinate implementation of this plan for the Agency and, per the 2009 and 2021 presidential memoranda, has and will continue to report annually to the Office of Management and Budget (OMB) on the implementation of EO 13175.

EPA's Consultation Policy also designates key senior EPA management and staff to oversee and help implement the Consultation Policy. The policy designates EPA Assistant Administrators and Regional Administrators to oversee the consultation process in their respective headquarters

and regional offices. Additionally, the Consultation Policy designates Tribal Consultation Advisors in each headquarters and regional office to assist EPA programs in identifying matters appropriate for consultation and serve as points-of-contact for EPA senior leadership and staff, tribal governments, and other parties interested in the consultation process.

Tracking, Management, and Reporting of Consultation Actions

To help ensure consistent identification, tracking, and management of EPA consultation actions, EPA follows a number of internal systems and protocols, as described below.

Tribal Consultation Opportunities Tracking System & TCOTS-DASH: The Agency uses its [Tribal Consultation Opportunities Tracking System \(TCOTS\) website](#) to track and manage current and past EPA consultation opportunities. To help improve tracking and management of EPA consultation efforts and to better communicate consultation information to senior leadership, AIEO has also developed a new, internal tool called TCOTS-DASH. Using information entered by headquarters and regional offices into TCOTS, TCOTS-DASH will provide real-time data to EPA leadership and staff on open tribal consultation opportunities as well as long-term consultation trends over time. EPA plans to launch TCOTS-DASH for EPA leadership in spring 2021.

Annual Reporting to OMB: Pursuant to the 2009 presidential memorandum, EPA submits annual progress reports to OMB on the status of the consultation process and actions and identifies any updates to EPA's Consultation Policy and its implementation. EPA will continue to provide such annual reporting to OMB, as directed by the 2021 presidential memorandum.

Consultation Documentation and Certification for EPA Regulatory Actions

Pursuant to EO 13175, if a regulatory action will have a "substantial direct[] effect on one or more tribes," which is a narrower threshold than "may affect tribal interests" as applied under EPA's Consultation Policy, each federal agency must certify to OMB that appropriate consultation with tribes was conducted on the action in question and document a "tribal summary impact statement" in its preamble to the rule (EO 13175, Sections 5(b)(2)(B) & 5(c)(2)). To comply with this directive, when EPA submits a draft final regulation to OMB for review under EO 12866, the Agency includes a "tribal summary impact statement" as part of the preamble to a rule. Additionally, under EO 13175, if an Agency action or decision is determined to have "tribal implications," EPA is required to certify that the requirements of EO 13175 "have been met in a meaningful and timely manner" when transmitting the draft of the final regulation to OMB for review (EO 13175, Section 7(a)). Prior to submitting relevant final actions to OMB for review, EPA programs must obtain a memo from the EPA's Designated Consultation Office certifying compliance with EO 13175 consultation requirements.

EPA's Tribal Treaty Rights Guidance

As a supplement to EPA's Consultation Policy, in February 2016, EPA issued its [Policy on Consultation and Coordination with Indian Tribes: Guidance for Discussing Tribal Treaty Rights](#). EPA developed this guidance after nationwide tribal consultation. The guidance complements EPA's Consultation Policy by providing affirmative steps for the Agency to take during tribal consultations when an EPA action occurs in a specific geographic location and a resource-based treaty right, or an environmental condition necessary to support the resource, may be affected by EPA's action. Pursuant to the guidance, in such instances, EPA will seek information and recommendations on tribal treaty rights and consider all relevant information obtained to help ensure that EPA's actions do not conflict with treaty rights, and to

help ensure that EPA is fully informed when it seeks to implement its programs and to further protect treaty rights and resources when it has discretion to do so.

EPA continuously strives to incorporating tribal treaty rights into their work. For example, EPA's Office of Superfund Remediation and Technology Innovation issued a memo on the [*Consideration of Tribal Treaty Rights and Traditional Ecological Knowledge in the Superfund Remedial Program*](#) in January 2017.

EPA's Guiding Principles for Consulting with Alaska Native Claims Settlement Act Corporations

EPA has a long history of engaging with ANCSA corporations and is seeking to formalize this process. EPA is working to finalize its *Guiding Principles for Consulting with Alaska Native Claims Settlement Act (ANCSA) Corporations*. This action is being undertaken in compliance with Congressional direction², which requires all agencies to consult with ANCSA corporations "on the same basis as Indian tribes under Executive Order No. 13175." The Agency provided an opportunity for both ANCSA corporations and federally recognized tribes to consult on the proposed draft ANCSA consultation guidelines from December 16, 2019 to July 13, 2020. The Agency is currently working to finalize the guiding principles document and develop implementation materials for EPA staff based on the consultation input received. EPA anticipates that it will release the final guiding principles for consulting with ANCSA corporations later this year.

V. Conclusion

EPA would like to acknowledge the early commitment of the Biden Administration to regular, meaningful, and robust consultation with tribal nations and to seeking information from federal agencies on the steps they are taking to implement the policies and directives of EO 13175, developed in consultation with tribal nations. EPA remains committed to consulting with tribes and to holding meaningful communication and coordination between EPA and tribal officials prior to EPA taking actions or implementing decisions that may affect tribes. EPA looks forward to this opportunity to share its *Plan for Implementing the Policies and Directives of Executive Order 13175* with OMB and to work as an Agency to respond to and address tribal input to improve EPA's implementation of its consultation policies and practices, pursuant to the policies and directives of EO 13175. EPA is dedicated to strengthening our consultation policies and procedures.

² Public Law 108-199, 118 Stat. 452 (2004), as amended by Public Law 108-447, 118 Stat. 3265 (2004)