

U.S. Department of Energy
Washington, DC

ORDER

DOE O 144.1A

Approved: 10-07-2024

SUBJECT: DEPARTMENT OF ENERGY (DOE) REQUIREMENTS FOR CONSULTATION AND ENGAGEMENT WITH FEDERALLY RECOGNIZED INDIAN TRIBES AND ALASKA NATIVE CLAIMS SETTLEMENT ACT CORPORATIONS PURSUANT TO DOE POLICY 144.1

1. PURPOSE. This Order communicates Departmental, Headquarters program, field site, laboratory, and contractor responsibilities and requirements for consultation and engagement with federally recognized Indian Tribes that arise from *U.S. Department of Energy Policy on Consultation and Engagement with Federally Recognized Indian Tribes and Alaska Native Claims Settlement Act Corporations* (DOE Policy 144.1; Tribal Consultation Policy). This Order expands and clarifies Departmental policy on consultation with Indian Tribes and Alaska Native Claims Settlement Act (ANCSA) Corporations and acknowledges the provisions for conducting consultation in compliance with applicable statutes.

Definitions of terms in this document, such as “Indian Tribe” or “Tribe”, “Tribal implications”, “consultation”, and “engagement” are available at the end of this Order. Reference documents are also included towards the end of this document.

2. CANCELS/SUPERSEDES. DOE O 144.1, *Department of Energy American Indian Tribal Government Interactions and Policy*, dates 11-6-09. Cancellation of a directive does not, by itself, modify or otherwise affect any contractual obligation to comply with the Order. Contractor Requirement Documents (CRDs) that have been incorporated into or attached to a contract remain in effect until the contract is modified to either eliminate requirements that are no longer applicable or substitute a new set of requirements.

3. APPLICABILITY.

- a. Departmental Applicability. This Order applies to all Departmental Elements unless specifically stated otherwise.

- (1) The Administrator of the National Nuclear Security Administration (NNSA) must ensure that NNSA employees comply with their responsibilities under this directive.
- (2) Nothing in this directive will be construed to interfere with the NNSA Administrator's authority under section 3212(d) of Public Law (P.L.) 10665 to establish Administration specific policies, unless disapproved by the Secretary.

b. DOE Contractors.

Except for the exclusions in paragraph 3c, the Contractor Requirements Document (CRD), Attachment 1, sets forth requirements of this Order that apply to contracts that include the CRD.

Each DOE Head of Departmental Element must ensure the CRD (tailored to the extent appropriate by the Head of Departmental Element's appointed DOE Contracts Tribal Point of Contact) is included in contracts (both management and operating (M&O) contracts and non-M&O contracts) under which work and contractor interactions may have the potential to impact the interests of Indian Tribes or the interests of ANCSA Corporations.

c. Exemption.

- (1) This directive does not affect Departmental interactions where the potentially impacted Indian Tribe or ANCSA Corporation is a party to an action planned by a non-federal entity, that involves funding, approval, or other final agency action provided by the Department. A letter of support for an action does not determine whether an Indian Tribe or ANCSA Corporation is a party to an action.
- (2) This directive does not affect Departmental interactions with non-federally recognized Tribes.
- (3) In accordance with the responsibilities and authorities assigned by Executive Order 12344, codified at 50 U.S.C. sections 2406 and 2511 and to ensure consistency through the joint Navy/DOE Naval Nuclear Propulsion Program, the Deputy Administrator for Naval Reactors (Director) will implement and oversee requirements and practices pertaining to this Directive for activities under the Director's cognizance, as deemed appropriate.

4. REQUIREMENTS.

- a. Training for DOE Officials. In order to successfully realize meaningful and robust consultation and engagement with Indian Tribes and ANCSA Corporations, Departmental staff whose work may have potential to impact the interests of Indian Tribes or ANCSA Corporations must undergo training on ways to work effectively with Indian Tribes and ANCSA Corporations and on methods for, implementing this Order.

- (1) DOE personnel and contractors will receive annual training on the following topics:
 - (a) Colonization, federal Indian policy, and the associated effects on Native American people and Tribal governments.

- (b) The Tribal sovereignty, federal Tribal trust responsibility, and government-to-government relationship between the federal government and Tribes;
- (c) The treaty rights of Tribes and Tribal trust resources;
- (d) Sacred sites and cultural resource protection;
- (e) History of U.S. energy policies and energy projects and their continuing effects on Tribes
- (f) The culture and history of American Indians, Alaska Natives, and Tribes;
- (g) Existing consultation policies of the Tribe(s), as well as Tribal government structures, and decision-making processes;
- (h) The DOE Policy and Order 144.1;
- (i) American Indian and Alaska Native cultural awareness, including Indigenous Knowledge;
- (j) Tribal governance.

b. Consultation.

- (1) Requirement for Consultation. DOE Elements must invite Indian Tribes and ANCSA Corporations to consult early and throughout the planning process whenever a Departmental action has Tribal implications. DOE Elements must operate under the assumption that all actions with land or resource use may have Tribal implications and must extend invitations to consult, where appropriate. Indian Tribes and ANCSA Corporation shareholders continue to have deep connections and continued legal rights to their traditional homelands. DOE Elements need to be cognizant that some Indian Tribes may have been forcefully removed from their homelands or may have reservations that are significantly reduced from their traditional homelands due to past federal Indian policies. DOE Elements must consult with Indian Tribes or ANCSA Corporations whenever Departmental actions may have Tribal implications. DOE Elements should coordinate, as needed, with the Deputy Assistant Secretary for Intergovernmental and Tribal Affairs to evaluate whether Departmental actions have Tribal implications and on the appropriate consultation approach and process. In accordance with *EO 13175, Consultation and Coordination With Indian Tribal Governments*, "funds necessary to pay the direct costs incurred by the Indian Tribal government or the Tribe in complying with the regulation are provided by the federal government".

- (2) Appropriate Representatives at Consultation.
 - (a) The Department official with authority to decide on the proposed Departmental Action must participate in the consultation.
 - (b) Indian Tribal or ANCSA Corporate officials having decision-making authority, or their authorized representatives, including their legal counsel and traditional and cultural leaders.
 - (c) DOE Element staff with subject matter expertise for the topic or program must be involved in the consultation.
- (3) Coordination. DOE Elements will work with each other and with other federal agencies, where appropriate, to coordinate consultation, and that adheres to this Order to the extent feasible.
- (4) Facilitation Support. In planning consultation, DOE Elements should consider best practices, including, but not limited to, the use of neutral facilitation and other collaborative problem-solving approaches to promote effective dialogue and conflict resolution.
- (5) Conduct During Consultation. DOE Elements must be open and candid with Indian Tribal or ANCSA Corporate representatives. DOE Elements should seek to incorporate Tribal and ANCSA Corporation views and Indigenous Knowledge in DOE's decision-making processes. All consultations and engagement must be respectful of Tribal sovereignty. The goal is for federal representatives to engage in an open, transparent, and respectful dialogue with Indian Tribal and ANCSA Corporation representatives based on mutual understanding of the issues and to earnestly seek to reach a common agreement in utilizing the consultation procedures listed in paragraph 5.c. These principles of conduct apply to DOE Elements during engagement with Indian Tribes or ANCSA Corporations
- (6) Seeking Consensus. The Department recognizes that the importance of any particular Departmental action having Tribal implications will vary from case-to-case but affirms the goal is to achieve consensus wherever possible. The basis of consultation is rooted in meaningful dialogue where the viewpoints of Indian Tribes, ANCSA Corporations, and the Department are shared, discussed, and analyzed. To seek consensus, Departmental elements may need to begin consultation early in the planning process, provide additional opportunities for consultation and fact finding and related data gathering, conduct additional targeted outreach to Tribes, and, where possible, provide longer timeframes for developing and implementing Departmental actions having Tribal implications.

- (7) Consultation Session Methods. Consultation session methods may include, but are not limited to, in-person meetings, video conferences, teleconferences, and correspondence to discuss a specific issue. Sessions being held as government-to-government consultation should be identified in advance of the scheduled meeting. Consultation session methods may be expanded upon through subsequent correspondence after consultation is initiated through written notification. The Department will strive to include both in-person and remote 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. When coordinating a consultation, Departmental elements must be sensitive to potential technological limitations some tribes may face. On a case-by-case basis, consultation may be held through a series of written correspondence with Indian Tribal or ANCSA Corporate officials, but only when other consultation session methods are not feasible.

Note: Providing notification (the distribution of information from one or more Departmental offices) to one or more Tribes of a Departmental action as a stand-alone effort is not consultation.

- (8) Consultation Procedures. DOE Elements will carry out the consultation stages described below for a Departmental action having Tribal implications.

(d) Initial Planning Stage.

- 1 The appropriate Department official(s) within a DOE Element will invite Indian Tribal or ANCSA Corporation officials to consult as early as possible when considering a Departmental action having Tribal implications and will provide Tribes a meaningful opportunity to participate in the consultation process. (The appropriate Department officials are those individuals who are knowledgeable about the matters at hand, are authorized to speak for a DOE Element, and who exercise authority in the disposition and implementation of the DOE Element action.)
- 2 The invitation must include sufficient detail of the topic(s) to be discussed to allow Tribal leaders to determine if they want to accept and, if so, provide an opportunity to fully participate in consultation. An adequate invitation to consult includes the following:
 - a A description of the topic(s) to be discussed;

- b The scope of the proposed Departmental action under consideration;
 - c The purpose of the Departmental action under consideration;
 - d A timeline of the process, and possible outcomes of the Departmental action under consideration; and
 - e Identification of DOE Elements that will participate in the consultation and the development and implementation of the Departmental action under consideration.
 - f As feasible, a recognition of willingness to avoid scheduling meetings that interrupt ceremonies, cultural traditions, and critical times of year for subsistence harvest, fishing, or hunting, and an invitation for the Indian Tribe to disclose those times in a manner that does not disclose sensitive information.
- 3 The invitation must give Indian Tribal or ANCSA Corporate 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 Order.
- 4 If an Indian Tribe or ANCSA Corporation chooses not to consult, the Departmental Element(s) should discuss alternative means of soliciting Tribal views. Examples of alternative means may include, but are not limited to: a Tribal resolution; a letter or give spoken statements from Tribal or ANCSA Corporation leadership or staff authorized to speak on behalf of the Tribe or ANCSA Corporation; DOE Element attendance at a regional meetings of Tribes or ANCSA Corporations; DOE Element attendance at relevant Tribal or Alaska Native conferences; etc.
- 5 If the invitation announces a scheduled consultation session, the DOE Element will ensure that notice to the relevant Indian Tribes or ANCSA Corporations is given at least 30 days prior to the first scheduled consultation session. If exceptional circumstances prevent notification within 30 calendar days (preferably 45 days or more), an

explanation for the abbreviated notification will be provided in the invitation letter.

- 6 If the invitation announces the opportunity to consult, without a scheduled Tribal consultation session, the invitation will give Indian Tribal or ANCSA Corporate leaders at least 30 calendar days' notice (preferably at least 45 calendar days) to request consultation before Department action planning proceeds.
 - i. An Indian Tribe or ANCSA Corporation may request that the Department provide an extension of more than 30 days notice to consider whether to request consultation and, at its discretion, the Department may grant such requests.
 - ii. If a DOE Element invites an Indian Tribe or ANCSA Corporation to consult but does not receive a response, the DOE Element must make good-faith and reasonable efforts to repeat the invitation and, when feasible, allow Tribes to join an ongoing consultation. These efforts shall be appropriately documented.
- 7 An Indian Tribe or ANCSA Corporation may request that the Department initiate consultation when they believe that a DOE Element is considering a Departmental action that may have Tribal implications. The appropriate DOE Tribal Liaison Officer or appropriate representative will treat such a request in an expedited fashion and respond to the requestor(s) in writing that the Department has received the request, using the most expedient methods to communicate (for example, by email in addition to U.S. Mail).
- 8 Whenever an Indian Tribe or ANCSA Corporation requests consultation, the Department will work to schedule the consultation at a mutually agreeable time, usually 30 days in advance.

- (e) Proposed Action Development Stage. When developing a proposed actions, the DOE Element will employ a process that maximizes the opportunity for timely input by Indian Tribes or ANCSA Corporations. This process will take into consideration the schedules of the Indian Tribes or ANCSA Corporations as well as the DOE mission in order to enable substantive and timely input into the development of the proposed action. Examples of appropriate processes for the proposal development stage include,

but are not limited to, rulemakings, an Indian Tribal or ANCSA Corporate leader task force, a series of open meetings, or individual meetings. DOE Elements may perform these activities during the Initial Planning Stage, above, as appropriate.

- 1 DOE Elements will solicit the views of affected Indian Tribes or ANCSA Corporations regarding the process timeline to consult on a Departmental action having Tribal implications. DOE Elements should work with Indian Tribes or ANCSA Corporation officials to structure a process, to the extent practicable, that considers specific and particular structures, traditional needs (including Native language accommodations), and schedules of the Indian Tribe or ANCSA Corporation. DOE Elements may proceed with the expectation that interested Indian Tribes and ANCSA Corporations will respond within a reasonable time, and only after documenting attempts to follow up on consultation invitation letters through multiple forms (e.g., letters, emails, telephone calls, etc.).
 - 2 When the matter under consultation involves confidential or culturally sensitive information, the DOE Elements will work to develop a consultation process that addresses the confidentiality or cultural sensitivity of the information to the extent permitted by applicable laws and regulations.
 - 3 The DOE Element shall explain the constraints the Tribe if litigation, legal requirements, Congressional direction, natural disaster emergencies, government shutdowns, or any other circumstances beyond DOE control should impact a DOE scheduled consultation. 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 DOE Element will inform the Tribes at the earliest opportunity in this stage of the process.
- (f) Record of Consultation. On completion of the consultation period, the head of the DOE Element or their designee must prepare and transmit to the Tribe (or for national and regional consultations or if appropriate, publish on the DOE website) documentation in a record of consultation that includes the following:
- 1 A summary of input received from Indian Tribes and ANCSA Corporations;
 - 2 An explanation of how their input was addressed;

3 An explanation, when relevant, of why their input was not used or of why consensus could not be attained.

(g) Implementation of Final Federal Action Stage. After consultation concludes, DOE Elements may consider implementing a post-consultation review process that invites Tribal feedback or considers the need for training or technical assistance concerning the relevant Departmental Action having Tribal implications. The post-consultation review process shall not limit the Department's deliberative process privilege regarding internal considerations or any other applicable privilege and shall be implemented as permitted by law.

(9) Consultation with Alaska Native Claims Settlement Act (ANCSA) Corporations: The Department recognizes and respects the distinct, unique, and individual cultural traditions and values of Alaska Native peoples and the statutory relationship between ANCSA Corporations and the federal government. To the extent that concerns expressed by ANCSA Corporations substantively differ, Departmental officials shall give due consideration to the unique legal status and rights of Alaska Native Corporations. Department officials shall also be mindful that ANCSA Corporations hold title to lands and subsurface rights conveyed pursuant to ANCSA and related legislation.

(a) It is the policy of the Department to recognize and fulfill its legal obligations to consult with ANCSA Corporations on the same basis as Indian Tribes pursuant to E.O. 13175 and [25 U.S.C. §5301](#).

(b) All DOE Elements shall make earnest good-faith efforts to invite ANCSA Corporations to consult early in and as part of the planning and assessment/scoping process(es) and continuing for the entirety of the decision-making cycle.

(c) Consultation should be as seen as robust, interactive, pre-decisional, informative, and wholly transparent.

(d) It is the goal of the Department to maximize opportunities to seek consensus throughout the consultation cycle.

c. Engagement with Indian Tribes.

(1) DOE will interact with Indian Tribes in a manner that recognizes their inherent sovereignty, their unique political relationship with the federal government, and the federal trust responsibility. Interactions with Indian Tribal governments will be conducted in a sensitive manner at all times and take tremendous caution to not embarrass, demean, dismiss, minimize

or denigrate either Indian Tribal nations or the federal government as respective sovereigns.

- (2) DOE Headquarters Tribal Liaison Officers' contact information will be easily identifiable and posted on the DOE website to facilitate transparency and communication.
 - (3) Departmental elements will collaborate, as appropriate, with other federal and state agencies with responsibilities pertaining to Indian Tribes and ANCSA Corporations consistent with applicable authorities.
 - (4) Departmental elements will purposefully seek to identify and reduce as many barriers as possible to meaningful participation in and access to Departmental program opportunities, including, but not limited to, access to funding opportunities, economic development, research & development, and technical assistance.
- d. Annual Report. Heads of Departmental Elements must submit information by October 30 each year to the Assistant Secretary for Congressional and Intergovernmental Affairs. The annual report will be sent to DOE leadership and to OMB. The report may be made public on the DOE website. The annual report is a summary of all Departmental Element government-to-government consultations that were conducted on a nationwide or regional basis during the preceding fiscal year. Additionally, the annual report may contain any government-to-government consultation efforts conducted one-on-one with Tribes to highlight consultation successes, challenges, or best practices. The annual report may also contain significant Tribal engagement activities. The information in the annual report is a summary of, and should be compiled from, all the information captured during the preceding fiscal year. Public meetings should not be included in the reporting information. Additionally, any information deemed sensitive or confidential by an Indian Tribe or ANCSA Corporation should not be included in the annual report. For each fiscal year, the annual report should include the following information:
- (1) Tribal consultation capacity.
 - (a) Name of the Headquarters Tribal Liaison Officer.
 - (b) Tribal consultation and engagement training, including training dates, content, and number of staff who completed training.
 - (2) Tribe(s) with an interest in a DOE facility or location.
 - (a) List all Tribe(s) with an interest in the DOE facility.
 - (b) Date of last consultation between the Tribe and DOE facility in the reporting period.

- (3) Consultation activities.
 - (a) Summarize and list all consultation topics discussed.
 - (b) List all Indian Tribes and ANCSA Corporations consulted.
 - (c) List the location of each consultation by city and state and congressional district, including whether the consultation included remote participation.
 - (d) Summarize outcomes (e.g., decisions made, actions planned or taken, and how Tribal input was incorporated).
 - (e) Summarize successes and recommendations for improvements to the consultation process. Departmental Elements must get permission from the Tribe before including any information on successes in the annual report.
- (4) Report Prepared By, Date Prepared, and Approving Official.

e. Contracts.

- (1) After being notified by their Heads of Departmental Elements or designees of the contracts affected, Contracting Officers will include the provisions of the Contractor Requirements Document (CRD) (tailored to the extent appropriate by the DOE Contracts Tribal Point of Contact for the contract) in the affected contracts (and solicitations for what will become affected contracts).
- (2) Contracting Officers will include the CRD in affected contracts per the procedures in DOE O 251.1D "*Departmental Directives Program*." Contracting Officers will include the CRD in both affected Management & Operation (M&O) contracts and in affected non-M&O contracts. For affected M&O contracts, Contracting Officers will include the CRD in the contracts unilaterally (after providing the affected M&O contractor the opportunity to assess the CRD's effects and to provide feedback per the DOE Acquisition Regulation (DEAR) 970.5204-2 M&O contract clause "Laws, regulations, and DOE directives"). For affected non M&O contracts that include the DEAR 970.5204-2 M&O contract clause "Laws, regulations, and DOE directives". Contracting Officers shall attempt to include the CRD in affected incumbent non-M&O contracts
- (3) Heads of Departmental Elements or designees will identify affected contracts by determining, if under the contract work, contractor interactions may have the potential to impact the interests of Indian Tribes or the interests of ANCSA Corporations.

- (4) Heads of Departmental Elements or designees will designate a DOE Contracts Tribal Point of Contact for each affected contract who will be responsible for:
 - (a) Supporting the Contracting Officer in including the CRD in an affected contract;
 - (b) Tailoring the CRD if necessary (including adding Tribal provisions, specific requirements, and DOE-related agreements);
 - (c) Acting as the contractor's primary point of contact for fulfilling its obligations under the CRD;
 - (d) Ensuring the contractor provides adequate training to its employees;
 - (e) Coordinating with other relevant DOE Tribal points of contact as appropriate.
- (5) The Head of the Departmental Element, or his or her designee, must notify the Contracting Officer (CO) and other appropriate subject matter experts in the organization that the directive applies to an existing contract or to a solicitation for a future contract. For existing contracts, the Head of Departmental Element shall designate appropriate representatives to work with the CO to develop an appropriately tailored set of standards, practice, and controls.
 - (a) For existing M&O contracts, after being notified by the Head of the Departmental Element or his or her designee, the CO shall provide the contractor the opportunity to assess the effect of incorporating the CRD on contract cost, funding, schedule, and technical performance, and to provide input on the appropriately tailored set of requirements for the contract. All associated activities will be accomplished in a timely manner and, if applicable, in accordance with the timelines established in DEAR 970.5204-2. The Contracting Officer will incorporate the CRD without alteration unless the directive permits alteration and the appropriate process is followed.
 - (b) For existing non-M&O contracts, after being notified by the Head of the Departmental Element or his or her designee, the CO shall provide the contractor the opportunity to assess the effect of incorporating the CRD on contract cost, funding, schedule, and technical performance, and to provide input on the appropriately tailored set of requirements for the contract. Non-M&O contracts do not give the CO the unilateral right to modify them, except within the limitations established in the FAR. Therefore, the CO shall attempt to incorporate the CRD bilaterally. If attempts to

negotiate the requirement into the contract bilaterally are not successful, the CO shall consult with the Head of Contracting Activity (HCA), Headquarters program office, and General Counsel. The CO shall incorporate the CRD without alteration unless the CRD or directive permits alteration and the appropriate process is followed.

5. RESPONSIBILITIES. This section describes the responsibilities of all DOE Elements involved in Tribal interactions as well as reporting requirements.

a. Heads of Departmental Elements.

- (1) Ensure that procedures are established to carry out the consultation and engagement activities of their organizations and ensure compliance with those procedures.
- (2) Designate in writing one or more Tribal Liaison Officer (Headquarters Tribal Liaison Officer), who is a federal employee, to carry out the responsibilities described in this Order.
- (3) Inform the Deputy Assistant Secretary for Intergovernmental and Tribal Affairs (DAS) of government-to-government consultations, meetings, briefings, or similar levels of interactions with the representatives of Indian Tribes or ANCSA Corporations. The DAS must be informed regarding all meetings with Indian Tribal and ANCSA Corporate leaders and will decide if a representative from the Office of Congressional and Intergovernmental Affairs should be present.
- (4) Submit an annual report to the Deputy Assistant Secretary for Congressional Affairs summarizing the office's compliance with the principles of the Order. Reports shall include information as identified in section 4.k.
- (5) Oversee the programmatic DOE Head of Departmental Element's designated Contracts Tribal Representative and the DOE Contracts Tribal Point of Contact for contracts in fulfilling their responsibilities for Tribal government engagement with Indian Tribes and ANCSA Corporations and related activities.
- (6) Ensure that personnel under their purview receive training as required in section 4.a. of this Order.
- (7) Develop an implementation plan to implement this Order and Policy, including identifying staff, budget, training, and (if needed) internal guidelines.
- (8) Identify affected contracts and notify Contracting Officers. Identify affected contracts by determining if under the contract's work contractor

interactions may have the potential to impact the interests of Indian Tribes or ANCSA Corporations.

- (9) Appoint a DOE Contracts Tribal Point of Contact for each affected contract who will be responsible for the following: supporting the Contracting Officer in including the CRD in an affected contract; tailoring the CRD if necessary (including adding Tribal provisions, specific requirements, and DOE related agreements); acting as the contractor's primary point of contact for fulfilling its obligations under the CRD; ensuring the contractor provides adequate training to its employees; and coordinating with other relevant Tribal points of contact as appropriate.

b. Heads of Field Elements in Conjunction with Responsible Heads of Headquarters Elements.

- (1) Designate in writing one or more Field or Site Tribal Liaison Officer, who is a federal employee, to carry out the responsibilities described in this Order.
- (2) Develop an implementation plan for the site to implement the Policy and Order, including identifying staff, budget, training, and (if needed) internal guidelines.
- (3) Oversee the Field or Site Element Tribal Liaison Officer whose responsibilities include regular interaction with senior field element management about the site's interaction and consultation with Indian Tribes.
- (4) As needed, develop, and implement additional internal guidelines to assist management in its responsibilities to implement this Order and Policy in areas under their cognizance.
 - (a) Field elements must invite Indian Tribes and ANCSA Corporations early in the planning process to consult whenever a Departmental action has Tribal implications.
 - (b) Guidelines should relate and include, but are not limited to, statutory, regulatory, and other procedures for interactions and consultation with Indian Tribes and ANCSA Corporations and suggested approaches to address impediments.
- (5) Inform the Headquarters Tribal Liaison Officer about all meetings, briefings, or similar levels of interactions with Indian Tribes, ANCSA Corporations, or Tribal organizations.

c. Tribal Liaison Officer.

- (1) The Headquarters or Field/Site Tribal Liaison Officer is a federal employee designated by their Head of Departmental Element or Head of Field Element to carry out the responsibilities described in this Order.
- (2) Serve as the Departmental Element principal point of contact for Indian Tribal and ANCSA Corporate consultation and engagement matters.
- (3) Promote and facilitate consultation and collaboration between their office and Indian Tribes and ANCSA Corporations.
- (4) Report to the DAS for Intergovernmental and Tribal Affairs (Tribal Governance Officer) annually in the Tribal Consultation Annual Report of new national or regional consultations with Indian Tribes and ANCSA Corporations and any updates to their office consultation procedures or processes.
- (5) Serve as a liaison and resource for management and staff to facilitate consistent consultation and engagement with Indian Tribes and ANCSA Corporations.
- (6) Field or Site Tribal Liaison Officers will work with their Headquarters counterpart to coordinate on upcoming consultations, meetings, events, and other engagement activities, as appropriate.
- (7) As appropriate, serve as the point of contact for the Contracting Officer, as needed, to assist with Tribal issues in applicable solicitations and contracts.
- (8) Maintain a list of current contact information for leadership and staff from Indian Tribes and ANCSA Corporations with whom there are regular interactions.
- (9) Educate and train or facilitate the education and training of management and relevant staff about this Order, the Policy and its principles and requirements, and any other relevant Tribal guidance.

d. Assistant Secretary for Congressional and Intergovernmental Affairs.

- (1) Collect from the heads of departmental elements an annual report due August 31 of each year that details interactions with Indian Tribes and compliance with the principles of the Policy. This report will be submitted to the Director of the Office of Management and Budget by October 30 of each year.

- (2) Chair the DOE Tribal Engagement Steering Committee as outlined in the Charter, supported by the Deputy Assistant Secretary for Intergovernmental and Tribal Affairs.

e. Deputy Assistant Secretary for Intergovernmental and Tribal Affairs (DAS).

- (1) Serve as the Tribal Governance Officer (TGO). The TGO is appointed by the Secretary and is responsible for carrying out the responsibilities in this Order including the following:
 - (a) Serve as the Secretary's representative when requested to do so in matters pertaining to consultation.
 - (b) Lead and manage the Department's consultation and engagement efforts to ensure effective relationships with Indian Tribes and ANCSA Corporations.
 - (c) Oversee the Department's compliance with this Order, E.O. 13175, and other policies and guidance pertaining to government-to-government consultation.
 - (d) Implement a Departmental reporting system to ensure that consultation efforts are documented and properly reported.
- (2) Execute the responsibilities of the DOE Tribal Engagement Steering Committee as outlined in its charter.
- (3) Host regular conference calls or meetings with Tribal Liaison Officers.
- (4) Provide policy, consultation, and engagement guidance to heads of Departmental elements concerning the Department's relationships with the Indian Tribes and ANCSA Corporations.
- (5) Serve as the Department's lead point of contact for Indian Tribes, ANCSA Corporations, and Tribal organizations on the DOE webpage and other internal communication documents.
- (6) Identify and maintain a contact list of Tribal Liaison Officers.
- (7) Maintain and distribute reference resources needed to support Policy implementation activities on a regular basis.
- (8) Work with Departmental elements to seek to identify and reduce barriers to meaningful participation and access to Departmental program opportunities, including, but not limited to, economic development, research & development, and technical assistance.

- (9) Provide guidance and monitor Headquarters and field implementation of procedures for consultation with Indian Tribes and ANCSA Corporations to ensure that their rights, including concerns regarding cultural resources management, are considered.
 - (10) Promote cooperation with federal and state agencies that have related responsibilities to Indian Tribes and ANCSA Corporations.
 - (11) Serve as the Department's lead point of contact for interagency coordination and cooperation on initiatives such as to preserve Tribal treaty rights, sacred sites, and Indigenous Knowledge.
- f. General Counsel. Provide advice to DOE elements and the DOE Tribal Engagement Steering Committee pertaining to authorities and policies related to the topics in this Order.
- g. Department Staff. Any Department staff who will represent and/or support the Department in consultation or engagement must first complete training to promote positive relations with Indian Tribes and ANCSA Corporations. (see paragraph 4.a.) Adhering to guidance provided in this Order and ensuring that staff are trained on working with Indian Tribal and Alaska Native communities will create stronger and more well-rounded relationships.
- h. Office of Indian Energy Policy and Programs. The Office of Indian Energy Policy and Programs within the Undersecretary for Infrastructure supports Indian Tribes and ANCSA Corporations in developing and deploying energy projects, typically on Tribal lands. These programs encompass various aspects of energy, including capacity building, efficiency, and the development of electrical generation and transmission facilities. The Office does not typically conduct consultation because it provides funding to Indian Tribes and their instrumentalities. However, the office has experience and relationships with Indian Tribes which may be relevant to support other offices in carrying out their consultation or engagement.
- i. DOE Tribal Engagement Steering Committee (TESC). This is an internal committee comprised of representatives from Departmental Elements with Tribal equities. TESC will:
 - (1) Purpose: Provide a forum for assistance and advice to DOE Headquarters Tribal Liaison Officers and senior management.
 - (a) Address cross-cutting Tribal related activities and concerns and identify opportunities for synergy across various sectors within DOE.
 - (b) Ensure that Tribal rights are upheld and Tribal interests and views are meaningfully considered and appropriately documented.

- (c) Coordinate, collaborate, and provide recommendations on Tribal related issues and activities across all DOE elements.
 - (d) Provide recommendations directly to the Deputy Secretary on implementing Tribal related topics involving the Department.
 - (e) Identify regulatory, statutory, and/or procedural impediments to the Department working with and consulting Indian Tribes and ANCSA Corporations.
 - (2) Each DOE Element with equities or work that may have Tribal implications will designate one or more federal employees to serve as a member of the TESC to represent senior leaders of each element for regular meetings. Periodically, meetings will be held with senior leaders of elements at the direction of the TESC Chair.
 - (3) Chair: The Assistant Secretary of Congressional & Intergovernmental Affairs will serve as TESC Chair or delegate those responsibilities to the Deputy Assistant Secretary, and will call meetings, set agendas, and ensure actions are completed.
 - (4) Meetings shall occur on a regular basis to be determined by the Chair, at a minimum bi-monthly, or special meetings may be called at the request of senior Element leaders. An agenda, a meeting summary, and actions shall be distributed to members.
- j. DOE Contracts Tribal Point of Contact.
- (1) For each contract they are assigned, serve as the information resource and liaison for both the federal management and staff and for the Contractor to facilitate the federal government's and the Contractor's interaction with the federal government's consultation with Indian Tribes and ANCSA Corporations.
 - (2) Serve as the Contractor's first and primary point of contact for all matters relating to the Contractor's fulfilling its obligations under the CRD included in the contract. Interact directly with the Contractor's Tribal Point of Contact for facilitating the federal government's and the Contractor's appropriate interaction with, consultation with, and government-to-government relations with Indian Tribes and ANCSA Corporations.
 - (3) Support the Contracting Officer in including the CRD in an affected contract, tailoring the CRD if necessary (including adding specific requirements applicable to Indian Tribes and ANCSA Corporations, and related DOE agreements); provide the CRD to the Contracting Officer.
 - (4) Assist the Contractor in fulfilling its obligations in the CRD, if existing Departmental training programs are not adequate, coordinate with the

Contractor's Tribal Point of Contact in developing adequate training programs and using them to train the Contractor's employees about the affected Indian Tribes and ANCSA Corporations, their governance, culture, and legally protected rights.

- (5) Draft and submit an annual report of interactions and meetings with Indian Tribes and ANCSA Corporations and submit it to Heads of Field Element or Responsible Heads of Headquarters Element.
- k. Head of the Contracting Activity. In conjunction with the responsible head of field element, ensure Contracting Officers include the CRD (tailored to the extent appropriate by the DOE Contracts Tribal Point of Contact for the contract) in affected contracts and solicitations.
- l. Contracting Officer. After being notified by the Head of the Departmental element or designee of the affected contracts, include the CRD (tailored to the extent appropriate by the DOE Contracts Tribal Point of Contact in affected contracts.

6. INVOKED STANDARDS.

This Order does not invoke any DOE technical standards or industry standards as required methods. Any technical standard or industry standard that is mentioned in or referenced by this Order is not invoked by this Order. Note: DOE O 251.1, current version, provides a definition for "invoked technical standard."

7. DEFINITIONS.

- a. Alaska Native Claims Settlement Act (ANCSA) Corporation. Any Alaska Native village corporation, group corporation, urban corporation, former reserve corporation, or corporation established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. § 1601 et seq.), with which federal agencies are directed to consult on the same basis as Indian Tribes. 25 U.S.C § 5301 note (codifying Pub. L. 108-199, 118 Stat. 452 (2004), as amended, Pub. L. 108-447, 118 Stat. 3267 (2004)).
- b. Consultation. A Tribal consultation is a two-way, government-to-government dialogue between official representatives of Indian Tribes and federal agencies to discuss federal proposals before the federal agency makes decisions on those proposals. The federal agency provides sufficient advance notice to appropriate Indian Tribes of upcoming consultation sessions and, following the consultation sessions, explains to Indian Tribes how the final agency decision incorporates Tribal input. Consultation is a process based on a bilateral recognition of sovereignty and is generally focused on a given issue or set of issues, including compliance with a variety of statutes, policies and administrative actions that direct the federal government to consult with Indian Tribes. Consultations are defined as having both Department and Tribal officials with decision-making authorities present at the consultation session(s)/meeting(s) regarding the

proposed Departmental action with potential impacts to Tribal interests. Consultation should maximize opportunities to seek consensus to the greatest extent practicable.

- c. Cultural Resources. This includes but is not limited to "historic properties" as defined in the National Historic Preservation Act, 54 U.S.C. § 300308; "archaeological resources" as defined in the Archaeological Resources Protection Act, 16 U.S.C. 470bb; and "cultural items" as defined in the Native American Graves Protection and Repatriation Act, 25 U.S.C. §3001.
- d. DOE Tribal Engagement Steering Committee. Group of Tribal Liaison Officers representing offices with Tribal interests within the Department. The purpose of the Tribal Engagement Steering Committee is to coordinate on Tribal issues across affected DOE offices.
- e. Departmental Action having Tribal Implications. Any Departmental regulation, rulemaking, policy, guidance, legislative proposal, plan, programmatic or operational activity, or grant or funding formula changes that may have the potential to impact the interests of Tribes or the interests of ANCSA Corporations or to impose substantial direct compliance costs on them. Departmental actions include any action planned by a non-federal entity that involves funding, approval, or other final agency action provided by the Department, except where a Tribe is a party to the action planned by the non-federal entity. DOE Elements should coordinate, as needed, with the Deputy Assistant Secretary for Intergovernmental and Tribal Affairs to evaluate whether Departmental actions have Tribal implications and on the appropriate consultation approach and process. The interests of Tribes in particular include, but are not limited to:
 - (1) Tribal self-governance
 - (2) Tribal intergovernmental relations with the federal government
 - (3) Tribal trust resources
 - (4) Tribal treaty, reserved, or other rights
 - (5) Tribal natural and cultural resources and practices; including sacred sites
 - (6) Lands from which a Tribe may have been removed; or
 - (7) Tribal access to historical or traditional areas of cultural or religious significance located within federally managed lands or waters
- f. Engagement: Engagement is all interactions with Tribes, ANCSA Corporations, and Native American and Hawaiian Native communities outside of consultation. This may include, but is not limited to, communications (newsletters, emails, social media, etc.), technical assistance project interactions, meetings, workshops, and listening sessions.

- g. Indian Tribe or Tribes. Any American Indian or Alaska Native Tribe, band, nation, pueblo, rancharia, village, or community included in the Federal Register list of Indian Tribes recognized by the Secretary of the Interior pursuant to the Federally Recognized Indian Tribe Act of 1994 as eligible for the special programs and services provided by the United States because of their status as Indians. 25 U.S.C. §§ 5130-5131.
- h. Indigenous Knowledge. Indigenous Knowledge is a body of observations, oral and written knowledge, innovations, practices, and beliefs developed by Tribes and Indigenous Peoples through interaction and experience with the environment. It is applied to phenomena across biological, physical, social, cultural, and spiritual systems. Indigenous Knowledge was developed over millennia, continues to develop, and includes understanding based on evidence acquired through direct contact with the environment and long-term experiences, as well as extensive observations, lessons, and skills passed from generation to generation. Indigenous Knowledge is developed by Indigenous Peoples including, but not limited to, Tribal Nations, Native Americans, Alaska Natives, and Native Hawaiians. Each Tribe or indigenous community has its own place-based body of knowledge that may overlap with that of other Tribes.
- i. Trust Responsibility. Promotion and protection of Tribal treaty rights, federally recognized reserved rights, and other federally recognized interests of the beneficiary American Indian and Alaska Native nations; determining, documenting, notifying, and interacting with Indian Tribes with regard to the potential impact of Departmental programs, policies, and regulations on American Indian and Alaska Native traditional and cultural ways of life, natural resources, treaty, and other federally recognized and reserved rights.
- j. Sacred Sites. "Sacred site" means any specific, discrete, narrowly delineated location on federal land that is identified by an Indian Tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion; provided that the Indian Tribe or appropriately authoritative representative of an Indian religion has informed the agency of the existence of such a site. [Executive Order 13007 | U.S. Department of the Interior \(doi.gov\)](#)
- k. Subsistence. Subsistence is defined by federal law as "the customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools or transportation; for the making and selling of handicraft articles out of nonedible by-products of fish and wildlife resources taken for personal or family consumption; and for the customary trade, barter or sharing for personal or family consumption." [eCFR2: 36 CFR Part 13 Subpart F -- Subsistence](#)
- l. Tribal Official. An elected or appointed Tribal leader or official designated in writing by an Indian Tribe to represent the Tribe in consultations with the

Department. Examples of Tribal official titles include, but are not limited to, Chairman, Chairwoman, Chief, Governor, and President.

- m. Tribal Governance Officer (TGO). The individual in the DOE Office of Congressional and Legislative Affairs designated by the Department to carry out responsibilities described in this Order.
- n. Tribal Liaison Officer(s). One or more individuals officially designated by an office to carry out responsibilities described in this Order.
- o. Treaty and Trust Resources and Resource Interests. Natural and other resources specified and implicit in treaties, statutes, and agreements, or lands or other resources held in trust by the United States for the benefit of Indian Tribes or individual Indians. In many instances, Indian Tribes may retain rights to access and to hunt, fish, and gather on lands and waters beyond their reservation or trust lands.

8. REFERENCES. The following references are included by reference in this Order.

a. DOE References

- (1) DOE Order 144.1, U.S. Department of Energy Policy on Consultation and Engagement with Federally Recognized Indian Tribes and Alaska Native Claims Settlement Act Corporations, dated [Draft]
- (2) DOE P 141.1, Department of Energy Management of Cultural Resources, dated 5-2-01 and certified 1-28-11, or its successor. [Department of Energy Management of Cultural Resources](#)
- (3) A Guide for DOE Employees, Working with Indian Tribal Nations, December 2000, [DOE Guide to Working with Tribal Nations \(energy.gov\)](#)

b. Other Consultation References

- (1) *Presidential Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships*, January 26, 2021. [Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships | The White House](#)
- (2) *Presidential Memorandum on Uniform Standards for Tribal Consultation* (November 2022). <https://www.federalregister.gov/documents/2022/12/05/2022-26555/uniform-standards-for-tribal-consultation>
- (3) Executive Order 13175 of November 6, 2000, *Consultation and Coordination with Indian Tribal Governments*. [Federal Register: Consultation and Coordination With Indian Tribal Governments](#)

- (4) Executive Order 14112 of December 6, 2023, Reforming Federal Funding and Support for Tribal Nations To Better Embrace Our Trust Responsibilities and Promote the Next Era of Tribal Self-Determination, [Federal Register : Reforming Federal Funding and Support for Tribal Nations To Better Embrace Our Trust Responsibilities and Promote the Next Era of Tribal Self-Determination](#)
 - (5) *National Historic Preservation Act*, as amended ([54 USC 300101 et seq.: Historic Preservation](#))
 - (6) Best Practices For Identifying and Protecting Tribal Treaty Rights, Reserved Rights, and Other Similar Rights in Federal Regulatory Actions and Federal Decision-Making, Nov 30, 2022, https://www.bia.gov/sites/default/files/dup/inline-files/best_practices_guide.pdf; and Tribal Treaty Rights Best Practices Flowchart, https://www.bia.gov/sites/default/files/dup/inline-files/ttr_flowchart.pdf
- c. Resources to Identify Relevant Indian Tribes and ANCSA Corporations
- (1) *Tribal Leaders Directory*, US Department of Interior, Bureau of Indian Affairs, [Tribal Leaders Directory | Indian Affairs \(bia.gov\)](#)
 - (2) *U.S. Domestic Sovereign Nations: Land Areas of Federally Recognized Tribes*, Bureau of Indian Affairs, [Indian Lands \(geoplatform.gov\)](#)
 - (3) *Tribal Directory Assessment Information*, Department of Housing and Urban Development, [TDAT \(hud.gov\)](#)
 - (4) [Tribal Treaties Database](#), Oklahoma State University Libraries, Home (okstate.edu)
 - (5) *The Twelve Regions*, ANCSA Regional Association, [The Twelve Regions - ANCSA Regional Association](#)
- d. Other Relevant References
- (1) *Alaska Native Claims Settlement Act* ([85 Stat. 688](#)) [[43 U.S.C. § 1601, et seq.](#)]
 - (2) *Native American Graves Protection and Repatriation Act*, as amended ([25 USC 3001-3013](#))
 - (3) *American Indian Religious Freedom Act*, as amended ([42 USC 1996, 1996a: Protection and Preservation of Traditional Religions of Native Americans](#))

- (4) *National Environmental Policy Act*, as amended ([42 USC 4321 \[Purpose\]](#) and [42 USC 4331-4335 \[Policies and Goals\]](#))
 - (5) Presidential Memorandum, November 30, 2022, *Guidance for Federal Departments and Agencies on Indigenous Knowledge*, [OSTP-CEQ-IK-Guidance.pdf \(whitehouse.gov\)](#)
 - (6) Interagency Memorandum of Agreement on Native Languages, November 2021, <https://www.doi.gov/sites/doi.gov/files/native-american-language-moa-11-15-2021.pdf>
 - (7) *Best Practices Guide for Federal Agencies Regarding Tribal and Native Hawaiian Sacred Sites*, December 2023, https://www.bia.gov/sites/default/files/media_document/sacred_sites_guide_508_2023-1205.pdf
9. NECESSITY FINDING STATEMENT. In compliance with Sec. 3174 of P.L. 104- 201 (50 U.S.C. 2584 note), DOE hereby finds that this Order is necessary for the protection of human health and the environment or safety, fulfillment of current legal requirements, or conduct of critical administrative functions.
10. CONTACT. Questions concerning this Order should be directed to the Office of Congressional and Intergovernmental Affairs at TribalConsultation@hq.doe.gov or 202-586-5450.

BY ORDER OF THE SECRETARY OF ENERGY:



DAVID M. TURK
Deputy Secretary

ATTACHMENT 1
CONTRACTOR REQUIREMENTS DOCUMENT
DOE O 144.1, *DEPARTMENT OF ENERGY AMERICAN INDIAN TRIBAL*
GOVERNMENT INTERACTIONS AND POLICY

Regardless of the performer of the work, the contractor is responsible for complying with the requirements of this CRD. The contractor is responsible for flowing down the requirements of this CRD to subcontractors at any tier to the extent necessary to ensure the contractor's compliance with the requirements.

The Contractor's primary point of contact regarding the Contractor's obligations under this CRD is the DOE Contracts Tribal Point of Contact for this contract.

The DOE Contracts Tribal Point of Contact for this contract is xxxxxxxxxx.

The Contractor must assist the Department on an ongoing basis to achieve meaningful consultation with Indian Tribes on a government-to-government basis. Among other things, the Contractor must assist the Department in meeting its responsibilities under this Order and accompanying Policy, as well as under any applicable treaties, laws, regulations, Executive Orders, or other applicable requirements (e.g., the Framework to Provide Guidance for Implementation of the US Department of Energy's American Indian and Alaska Native Tribal Government Policy and DOE P 141.1, *Department of Energy Management of Cultural Resources*) to ensure that the rights and interests of Indian Tribes are identified, considered, and protected, as appropriate, with respect to work and other activities at DOE-owned and controlled sites and facilities.

In assisting the Department in achieving meaningful engagement with Indian Tribes and ANCSA Corporations preceding and during consultation, the Contractor must:

1. Designate a Contractor Tribal Point of Contact to interact with the DOE Contracts Tribal Point of Contact.
2. In performing its work at the DOE-owned site or facility, appropriately protect the human health and safety, the environment, the cultural resources, the treaty rights, the reserved treaty rights, and the other legal rights of the federally recognized Indian Tribes.
3. Ensure its managers provide adequate and appropriate visibility to, and are accountable for, integrating the Contractor's obligations under this CRD into the Contractor's performance of work that involves DOE's interactions with Indian tribes. If existing Departmental training programs are adequate for the Contractor to fulfill its obligations under this CRD, use them to train employees about the affected Indian Tribes, their Tribal governments, their cultures, their treaty rights, their reserved treaty rights, and their other legal rights. If existing Departmental training programs are not adequate, coordinate with the designated DOE Contracts Tribal Point of Contact, develop adequate training programs, and use them to train employees about the affected Indian Tribes, their Tribal governments, their cultures, their treaty rights, their reserved treaty rights, and their other legal rights.

4. Communicate timely and openly with the DOE Contracts Tribal Point of Contact and the federally recognized Indian Tribes about its proposed work that may involve Tribal rights and interests (including, but not limited to: environmental monitoring and compliance, emergency operations and management, local citizens' advisory boards, etc.). Include Indian Tribes throughout the development and implementation of the contractor's proposed work. In all cases, the contractor must allow for a reasonable amount of time for comment by Indian Tribes prior to the contractor's preparation and execution of its proposed work.
5. Support and cooperate with DOE in meeting its obligations related to DOE's government-to-government consultations with federally recognized Indian Tribes and ANCSA Corporations.

Comply with the following specific requirements and the following related DOE agreements with an Indian Tribe or Tribes:

1. National Historic Preservation Act
2. Native American Graves Protection and Repatriation Act
3. American Indian Religious Freedom Act
4. National Environmental Policy Act
5. Executive Order (EO) 13175 Consultation and Coordination with Indian Tribal Governments; and the Presidential Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships (January 2021)
6. Presidential Memorandum on Uniform Standards for Tribal Consultation (November 2022)
7. Archaeological Resources Protection Act
8. Sacred Sites; Executive Order 13007