



United States Department of the Interior

OFFICE OF NATURAL RESOURCES REVENUE

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Memorandum

To: All Office of Natural Resources Revenue Employees

From: Gregory J. Gould

Subject: Office of Natural Resources Revenue Tribal Consultation Policy

Executive Order 13175 obligates Federal agencies to engage with Federally-recognized Indian Tribes on a government-to-government basis. Attached is the revised Office of Natural Resources Revenue (ONRR) Policy on Tribal Consultation, which is effective immediately and supersedes the May 2012 ONRR Consultation Policy. The ONRR Consultation Policy supplements the Department of the Interior's policy and is intended to provide additional guidance. Through this policy, ONRR works to strengthen its government-to-government relationship with Federally-recognized Indian Tribes and provide employees with specific guidance and tools for consulting with Indian Tribes.

As indicated in the attached Policy, please coordinate all consultation efforts with the Tribal Liaison Officer in the office of Indian Trust, Outreach, and Coordination.

Attachment

Office of Natural Resources Revenue
Policy on Consultation with Indian Tribes

December 2017

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I. Preamble

The obligation for Federal agencies to engage with Federally-recognized Indian Tribes on a government-to-government basis is based on the U.S. Constitution and Federal treaties, statutes, executive orders, and policies. Federal agencies help to meet that obligation through meaningful consultation with Indian Tribes.

The Office of Natural Resources Revenue (ONRR) is committed to fulfilling its Tribal consultation obligations. Tribal consultation obligations may arise due to new or existing statutes or administrative action such as Executive Order (EO) 13175 (Consultation and Coordination with Indian Tribal Governments,), Secretarial Order (SO) 3317, dated December 2, 2011, Departmental Manual Part 512 (Departmental Manual), or other applicable SOs or policies (See Sources, page 13). By adhering to the consultation framework described in this Policy, ONRR fulfills its consultation obligations. Through this Policy, ONRR works to strengthen its government-to-government relationship with Indian Tribes and will consult when office actions and decisions may affect Tribal trust resources, trust assets, or Tribal health and safety.

Consultation is a process of meaningful communication and coordination between ONRR and Tribal officials from a Federally-recognized Tribe, prior to ONRR taking actions or implementing decisions that may affect that Tribe or Tribes. As a process, consultation includes several methods of interaction that may occur at different levels. The appropriate level of interaction is determined by past and current practices, adjustments made through this Policy, and the continuing dialogue between ONRR and Tribal governments.

This Policy establishes guidelines and controls for consultation across ONRR. ONRR Program Offices have the primary responsibility for consulting with Tribes for topics or issues relevant to their Program Office functions. All Program Office consultation plans and practices must be in accordance with this Policy.

In accordance with the Department of the Interior (DOI), ONRR will report to the Secretary, through ONRR's designee, on its efforts to comply with the DOI Policy on Consultation with Indian Tribes (referred to herein as the DOI Policy) and the Departmental Manual.

II. Guiding Principles

This Policy broadly defines provisions for enhancing the ONRR's consultation processes with Federally-recognized Indian Tribes. This Policy shall complement, not supersede, any existing laws, rules, statutes, or regulations that guide consultation processes with Indian Tribes, and is implemented using existing ONRR structures to the extent possible.

This Policy requires a government-to-government consultation between appropriate Tribal officials and appropriate ONRR officials. For actions involving Tribal mineral or energy revenues, or Tribal mineral or energy resource management practices affected by ONRR actions or proposed actions, ONRR officials will identify appropriate Tribal officials early in the planning process and provide Indian Tribes a meaningful opportunity to participate in the consultation process, as described in Section VII. ONRR officials will participate in the consultation process in a manner that demonstrates a meaningful commitment and ensures

continuity in the process. The Policy thus honors the government-to-government relationship between the United States and Indian Tribes, and complies with the EO, SO, and the Departmental Manual, which are the basis for the DOI Policy. The EO specifies that each Agency must have an accountable process ensuring meaningful and timely input by Tribal officials in actions having Tribal implications; the SO provides guidance for Bureaus and offices within the DOI to implement supporting policies; and the Departmental Manual provides the procedures and process for the DOI consultation.

Consultation is a deliberative process that aims to create effective collaboration and informed Federal decision-making through a government-to-government exchange of information. It promotes enhanced communication that emphasizes trust, respect, and shared responsibility. Communication is open and transparent without compromising the rights of Indian Tribes or the government-to-government consultation process. Federal consultation conducted in a meaningful and good-faith manner further facilitates effective ONRR operations and governance practices. To that end, ONRR will seek and promote cooperation, participation, and efficiencies between bureaus and offices with overlapping jurisdiction, special expertise, or related responsibilities regarding ONRR actions, with Tribal implications. Efficiencies derived from the inclusion of Indian Tribes in ONRR's decision-making processes through Tribal consultation will ensure that future Federal action is achievable, comprehensive, sustainable, and reflective of Tribal input.

III. Definitions

Annual Report is a comprehensive report provided to the Secretary by ONRR on an annual basis. The report may include, but is not limited to, the scope of consultation efforts, the cost of these efforts, and the effectiveness of consultation activities. Additionally, ONRR will provide a comprehensive listing of the topics on which consultations were held, the Tribes consulted, locations of the consultations, summary of the issues and recommendations, and a summary of successes and accomplishments. Reports shall include feedback received from Indian Tribes ONRR has consulted. Reports should reference the documents and correspondence with Indian Tribes that address the Implementation of the Final Federal Action Stage, as described in Section VII of this Policy; a description of budget expenditures in the execution of consultation efforts, narratives describing significant consultation efforts, and forthcoming consultation opportunities. According to the Department Manual, the report is due by December 31 of each year.

Annual Tribal Letters are created by the Tribal Liaison Officer (TLO) at the conclusion of each fiscal year. The Tribal letters include data specific to each Tribe such as; royalty reporting for the last 5 fiscal years, royalty reporting by revenue type for the last fiscal year, cooperative agreement information (if part of a FOGRMA 202 Agreement), and compliance information. The compliance information section includes additional royalty revenue collected as a result of compliance review and audit activity.

Appropriate ONRR Officials are those individuals who are knowledgeable about the matters at hand, are authorized to speak for ONRR, and who exercise delegated authority in the disposition and implementation of an ONRR action.

Collaboration means ONRR and the Indian Tribes working together to implement this Policy on changes that may impact Indian mineral revenues.

Federally Recognized Tribe is a Tribe/Village officially recognized by the Federal government. There are currently 567 Federally-recognized Tribes in the United States, including 230 Alaska Native entities. Status as “Federally-recognized” means there is a historical and ongoing relationship with the Federal government. A list of Federally-recognized Tribes/Alaska Native entities is published annually in the Federal Register. Worth noting: for FY 2017, there were 37 distribution codes, for Federally-recognized tribes, that received royalty distributions from ONRR; and those Tribes are most likely to be the focus of ONRR’s Tribal consultation work.

Government-to-Government Relationship means the unique relationship between Tribes and the Federal Government, wherein a Tribal official or designee, duly authorized by and acting on behalf of the governing body of the Tribe, as a “sovereign, domestic, dependent nation” relates directly to the Federal government (or its agencies and representatives).

Indian Tribe or Tribes means any 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. §479a.

ONRR Action with Tribal Implication is any ONRR regulation, rulemaking, policy, guidance, legislative proposal, funding formula changes, or operational activity that may have a *substantial* direct effect on a Federally-recognized Tribe. Such actions do not include matters where a court order limits ONRR's discretion to engage in consultation, such as litigation and settlement negotiations; however, in the absence of such a limiting court order, ONRR will attempt to consult with the affected Tribe prior to completing settlement negotiations regarding that Tribe’s mineral or energy resources. Routine administrative interactions between ONRR staff and Tribes are not subject to this Policy.

Program Managers at the GS-15 and senior executives, who are over a Program Office, are responsible for ensuring meaningful consultation for functions relevant to their Program Office and in collaboration with ONRR’s TLO. The program managers for each Program Office are responsible for contacting the TLO as soon as they are aware that there is a potential topic, issue or concern that will likely affect an Indian Tribe, or Tribes. It is important that the TLO is apprised as soon as possible, so if a consultation is required, the Tribes are given the time and opportunity for meaningful consultation, which may include input from them. There may also be instances where ONRR is informing a Tribe or Tribes, and it is merely an informational consultation and input does not apply.

Program Offices are operational groups responsible for ONRR’s mission. The Program Offices have the lead in conducting the actual consultation on a specific project. The Program Office houses the subject matter experts (SMEs) on the given topic. The Program Office is not necessarily the same office that houses the TLO.

Tribal Governance Officer (TGO) is a Senior Departmental Official designated by the Secretary who will serve as the Department’s TGO and will, in coordination with the

Assistant Secretary – Indian Affairs establish and oversee the activities of a joint Federal Tribal Team, as described in Section 9 of the Secretarial Order Number 3317.

Tribal Implication is the potential for a regulation, rulemaking, policy, guidance, legislative proposal, or operational activity by ONRR to affect the energy or mineral revenues or governmental practices of a Federally Recognized Tribe.

Tribal Liaison Officer (TLO) is one or more individuals designated by ONRR to carry out responsibilities defined in this Policy and the DOI Policy. The role of the TLO is to ensure consistency across ONRR in the application of the ONRR Tribal Consultation Policy. Further, the TLO serves as a facilitator and advisor to the Program Offices and subject matter experts regarding Tribal consultation. The TLO currently works in the Indian Trust, Outreach, and Coordination (ITOC) Office and reports to the ITOC Program Manager.

Tribal Official is an elected or appointed Tribal leader or official designated in writing by an Indian Tribe to represent the Tribe in government-to-government consultations with ONRR.

IV. Accountability and Reporting

Communication methods that ensure accountability and reporting are essential to regular and meaningful consultation. In accordance with the DOI Policy, ONRR will include appropriate performance measures consistent with this Policy in annual performance plans of employees and managers.

The Secretary will provide an annual report to Indian Tribes on implementation of the DOI Tribal Consultation Policy. ONRR will report the results of efforts to promote consultation with Indian Tribes to the Secretary.

- A. The Role of Program Managers in Reporting: Program Managers will notify ONRR's TLO when there is a potential ONRR action with Tribal implication. The Program Manager will work with the TLO to determine if a consultation is necessary or appropriate. If a consultation is necessary or appropriate, the TLO will identify the appropriate Tribal official. The TLO will assist the Program Manager in contacting the Tribes and arranging consultation. Program Managers will report to the TLO the results of the consultation for each ONRR Action with Tribal Implication. Reporting is comprehensive and should include, but is not limited to, the scope of consultation efforts, the cost of these efforts, and the effectiveness of consultation activities.
- B. The Role of the TLO in Reporting: ONRR's TLO will prepare the Annual Report for the Secretary as required by the DOI Policy. This report will provide a comprehensive listing of the topics on which consultations were held, training, innovations, and the engagement of senior leadership in these efforts. The Annual Report is defined in Section III and provides an explanation of the information needed in this report. To support the DOI's reporting requirements, the TLO will maintain reporting documents provided by the Program Managers involved in the consultation.

V. Records

Records are defined by 44 U.S.C. 3301 as including, "all recorded information, regardless of form or characteristics, made or received by a Federal agency under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the United States Government or because of the informational value of data in them; and does not include library and museum material or acquired and preserved solely for reference or exhibition purposes; or duplicate copies of records preserved only for convenience."

Recorded information is then defined by 44 U.S.C. 3301 as "traditional forms of records, regardless of physical form or characteristics, including information created, manipulated, communicated, or stored in digital or electronic form." ONRR employees have a responsibility to protect and maintain all Indian fiduciary trust records. Employees will seek guidance from existing regulations, policies, and procedures regarding proper records management. Specifically, the following sources provide guidance:

- ONRR Records Management Manual 380.2-H
- DOI Department Manual 380DM 1: Records Management Program and Responsibilities
- DOI Departmental Manual 303 DM 2: Principles for Managing Trust Assets
- DOI Departmental Manual 303 DM 6: Indian Fiduciary Trust Records
- 36 CFR Subchapter B: Records Management
- ONRR Records Manager

In addition to maintaining Indian fiduciary trust records, the following responsibilities pertain to the Tribal Consultation Process:

- A. The Role of Program Managers in Maintaining Records: During the entire consultation process, ONRR Program Managers will ensure their offices maintain the consultation record for a specific project. The record will contain, at a minimum, all correspondence to or from Indian Tribes and Tribal officials, meeting notes, supporting documents used during the consultation process, and reports provided to the TLO. When the Tribal consultation is complete, Program Managers will provide required documents to the TLO; such as date(s) of the consultations, attendees, locations, and a summary of topics covered.
- B. The Role of the Tribal Liaison Officer in Records: The Tribal Liaison Officer is responsible for reporting ONRR's Tribal consultation results to the Secretary. Therefore, the TLO will maintain a copy of the required reporting documents.

VI. Training

ONRR will comply with the training requirements as outlined in Section V, of the DOI Policy. When appropriate, ONRR employees will participate in training for the purpose of promoting

collaboration with Indian Tribes and executing the consultation provisions of this Policy. Additionally, employees may be required to attend ONRR provided training.

VII. Consultation Guidelines

This Policy establishes uniform practices and common standards across the ONRR organization. ONRR Actions with Tribal Implications that are regional or impact a limited number of Indian Tribes will be carried out in a manner consistent with this Policy. The consultation process should begin as soon as the agency starts considering an action that may have a tribal implication.

Initiating Consultation: When considering an ONRR Action with Tribal Implications, the Program Office must notify the appropriate Federally-recognized Indian Tribes of the opportunity to consult, pursuant to this Policy and in coordination with the TLO. A consultation session is, but is not limited to, in-person meetings, video conferences, teleconferences, and correspondence to discuss a specific issue. In case of in-person meetings, video conferences, and teleconferences, the consultation may be expanded upon through subsequent correspondence after consultation is initiated. On a case-by-case basis, consultation may be held through a series of written correspondence with the Tribal leadership, but this process of utilizing written correspondence should only be used when other methods of dialogue are not feasible.

The Program Office will strive to ensure that notice is given at least 30-days prior to scheduling a consultation. If exceptional circumstances prevent notice within 30-days of the consultation, an explanation for the abbreviated notification will be provided in the invitation letter. An Indian Tribe may request an extension for timeliness associated with this Policy.

Adequate notice will provide a description of the discussion topic(s), a timeline of the process, and possible outcomes. The consultation notification will include sufficient detail of the discussion topics to allow Tribal leaders an opportunity to fully engage in the consultation. The notice should also give Tribal leaders the opportunity to provide feedback prior to the consultation, including any request for technical assistance or request for clarification of how the consultation process conforms to this Policy.

A. Roles and Responsibilities in the Tribal Consultation Process

1. *The Tribal Liaison Officer will:*
 - a. Work with ONRR Program Offices to achieve compliance and ensure consistency across ONRR with this Policy, the DOI Policy, and any future policies related to EO 13175 or other government-to-government consultation policies;
 - b. Promote, facilitate, and provide advice on consultation and collaboration between Indian Tribes and Program Offices;
 - c. Advocate opportunities for and consideration of the positions of Indian Tribes on ONRR Actions with Tribal Implication, consistent with ONRR's mission and trust responsibility;

- d. Serve as the principal point of contact for the TGO concerning compliance with the DOI Policy, including reporting requirements;
- e. Strive to enhance a trusting and on-going relationship with Indian Tribes, consistent with applicable laws and executive orders;
- f. Serve as an initial contact for Indian Tribes to request or inquire about consultation when it is not clear who to contact in the organization; and
- g. Maintain required reporting documents provided by the Program Offices as per Section 5B.

2. *Program Managers will:*

- a. Ensure compliance with this Policy;
- b. Notify the TLO as soon as it is apparent that there may be an ONRR Action with Tribal Implication and possible consultation;
- c. Request guidance from the TLO when uncertain how to proceed with Tribal consultation;
- d. Identify appropriate ONRR officials that will conduct the consultation;
- e. Maintain Indian records in accordance with Section V of this Policy and the Records Management Handbook; and
- f. Provide required document to the TLO at the conclusion of the consultation that includes date(s) of the consultation(s), attendees, locations, and a summary of topic(s) covered.

- B. Guidelines for Response to Request for Consultation: An Indian Tribe may request that ONRR initiate consultation, when the Indian Tribe believes that the organization is considering an ONRR Action with Tribal Implications. Tribes should make requests in writing to ONRR's designated TLO or Program Office and describe the specific ONRR Action with Tribal Implications. The TLO or Program Office will confirm receipt of a request for consultation from a Tribal Official. When the Tribe directs the request to the TLO, the TLO will forward the request to the appropriate Program Office. If the request is sent directly to the Program Office, the Program Office shall promptly notify the TLO of the request. The Program Office will expedite the official request for consultation and respond to the Tribe requesting consultation within 15 calendar days from receiving the request.

If the Program Office initiates consultation with a Tribe, but does not receive a response, the office must make reasonable and periodic efforts to repeat the invitation, to include email and phone calls, and, whenever feasible, should allow an Indian Tribe to join an ongoing consultation. The Program Office will document these efforts of engagement.

- C. Consultation Planning Process Support: In planning the consultation processes, as outlined below, Program Offices are encouraged to consider best practices for engagement; including the use of neutral facilitation and other collaborative problem-solving approaches to promote effective dialogue and conflict resolution. When needed,

ONRR may utilize DOI's Office of Collaborative Action and Dispute Resolution. This office can assist in planning and facilitating an effective consultation process, negotiated rulemaking, or other collaborative approach to decision-making.

D. Stages of the Consultation Process: Program Offices shall carry out the consultation stages described below for an ONRR Action with Tribal Implications.

1. *Initial Planning Stage:* The communication with the Tribe should begin early in the planning stage. The preferred contact at the Tribe and the Tribal implications should be identified right away. If unsure of the contact at the Tribe, contact the TLO. If unsure of the implication, refer to subject matter experts at ONRR, and if appropriate, ask the Tribe. It is important to identify all Tribes that may have an interest.
 - a. A Program Office may conduct a meeting or other form of interaction with Indian Tribes to receive and evaluate comments as part of the Initial Planning Stage. Offices will collaborate with the TLO, other Program Offices, and other Federal agencies, where appropriate, to avoid duplicative consultations. The appropriate ONRR officials will provide notice to, and begin consultation with Indian Tribes as early as possible when considering an ONRR Action with Tribal Implications and provide Indian Tribes a meaningful opportunity to participate in the consultation process. Providing notification to one or more Tribes of an ONRR action as a stand-alone effort is not consultation.
 - b. Notification of a consultation should include sufficient detail of the topic to allow Tribal leaders an opportunity to fully engage in the consultation. Advanced notice entails providing a description of the topic(s) to be discussed, a timeline of the process, and the possible outcomes. The notice should also give Tribal leaders the opportunity to provide feedback prior to the consultation, including time to request technical assistance.
 - c. Contact the Tribe until the Tribe has made a decision to accept or reject a consultation. Document all attempts and successful communications with the Tribe.
 - d. Per Section VII.B.: A Tribe may request that ONRR initiate consultation when they believe that ONRR is considering an agency action with Tribal implications. The appropriate ONRR official or appropriate representative will treat an official request for consultation in an expedited fashion and respond in writing to the Tribe within 15 days of receiving the request.
2. *Proposal Development Stage:* This stage is for collaboration with Tribes on protocol, consultation process and actual proposal. During this stage the Program Office should identify the issues and the goals to accomplish. Anywhere from one to multiple consultation sessions may be necessary at this stage. A collaborative agenda should be created and the form or

approach to use for consultation should be identified.

The Proposal Development Stage begins when ONRR discloses the scope of an ONRR Action with Tribal Implications. ONRR considers Federally recognized Indian Tribes appropriate collaborative partners, particularly where negotiated rulemaking is involved.

The Program Office will develop a process for the Proposal Development Stage that maximizes timely input by Indian Tribes and is accommodating for both Tribal and ONRR office schedules. The Program Office will solicit the views of affected Indian Tribes regarding the process timeline to consult on an ONRR Action with Tribal Implications. The office will work with Indian Tribes to structure a process that considers specific Indian Tribal structures, traditional needs, and schedules of the Indian Tribes. The Program Office will make all reasonable efforts to comply with the expressed views of the affected Indian Tribes regarding the process timeline at this Stage, taking into account the level of impact, the scope, and the complexity of the issues involved in the ONRR Action with Tribal Implications, along with the other factors driving the schedule. The process will be open and transparent. The Program Office may then proceed with the expectation that interested Indian Tribes will respond within a reasonable time period.

A collaborative agenda should be created that is open and transparent. It is important to work with the Tribe when creating the agenda. The agenda should identify the participants from the Tribe and ONRR. Participants from ONRR should include, at minimum, the subject matter expert(s), TLO, and the decision maker(s). Depending on the Tribe's government structure and issue involved, Tribal participants may include experts, elders, Tribal attorneys, and spiritual leaders. The Tribe may want to bring somebody that isn't affiliated with the Tribe. Although not affiliated, such invitees are still part of the Tribe for consultation purposes if they are a guest of the Tribe. Any limitations that may occur during a consultation should be identified on the agenda. Limitations could include things such as being unable to make a decision due to participants that are unable to attend.

While working with the Tribe to create the agenda, determine if there are any barriers to Tribal participation in consultation, such as timing, financing, and/or location. The Program Office and Tribe should agree to the length of the meeting, establish a meeting format, discuss if there will be prayer and who will lead it, discuss food and beverage needs, establish goals, and determine who will keep meeting minutes.

Before the consultation, be sure to research and observe what is appropriate in the particular community where you will be working. Each Tribe has its own unique cultural norms. Ask about cultural protocol and what type of clothing to wear to the consultation. If you aren't sure about the protocol, always ask.

When the matter under consultation involves confidential or culturally sensitive information, the office will work with the Indian Tribe to develop a consultation process that addresses the sensitivity of the information to the extent permitted by Federal law. If litigation or legal requirements impact an office's schedule for conducting consultation, the office will explain these constraints to the Indian Tribe.

Examples of appropriate processes for the Proposal Development Stage include the following:

- Negotiated Rulemaking: Where appropriate, ONRR will consider using negotiated rulemaking for developing significant regulations or other formal policies in accordance with the Federal Advisory Committee Act (FACA) and the Negotiated Rulemaking Act.
- Series of Open Tribal Meetings: The Program Office may send invitations to Tribal leaders to attend a series of open meetings. Open meetings are for national, regional or subject-matter specific issues.
- Single Meetings: The Program Office may host Tribal officials in a single meeting to discuss an ONRR Action with Tribal Implications under consideration. Single meetings are particularly appropriate for local or regional issues, or a Tribe-specific issue.

If the Program Office determines 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 Program Office will inform the Indian Tribes at the earliest opportunity and provide the Tribal Officials with meaningful explanation of the express prohibition.

Remember that the goal of consultation is to reach an agreement on mutual direction and the decision is implemented together. If unable to reach an agreement, at minimum, the consultation should provide a better understanding and incorporate the Tribe's perspective as much as possible as the Program Office moves forward.

3. *Implementation of the Final Federal Action Stage*: An office may consider implementing a post-consultation review process consistent with laws, regulations, and EO 13175. The review process will not limit ONRR's deliberative process privilege regarding internal considerations or any other applicable privilege. At the conclusion of the consultation, ONRR will provide feedback to the Tribe to explain how ONRR considered their input in the final action. This feedback should be formal, written communication from a senior ONRR official involved in the consultation. ONRR will consider the need for training or technical assistance concerning the final Federal action.
4. *Consultation Summary Report*: Upon completion of the consultation, the ONRR Program Office responsible for consultation must prepare a summary of the

consultation activities, including a summary of the positions of Tribal Officials. A copy of such summary shall be provided to participating Tribal Officials. Information from the summaries should be provided to the TLO and will be used to develop the Annual Report.

5. *Internal ONRR Communication:* Within 60 days, the decisions made between the Program Office and Tribe should be communicated to the ONRR employees to ensure they are informed of any decisions that may impact the work they perform.
- E. Impact of Consultation Guidelines: Consultation does not preclude requests or recommendations by the Program Offices or Indian Tribes to work in partnership and foster collaborative relationships between ONRR and Indian Tribes outside of the processes described in this Section.
- F. What Activities May Involve Consultation: The broad scope of consultation in this Policy creates a large number of actions that may be appropriate for consultation. The following list of ONRR activity categories provides a general framework for the TLO and Program Managers to determine whether any particular action or decision is appropriate for consultation. The final decision on consultation is normally made by the Program Manager after examining the complexity of the activity. Program Managers will also take into consideration implications for Tribes, time and/or resource constraints, and interaction with Tribal partnership groups and Tribal governments.

The following, non-exclusive list of ONRR activity categories are normally appropriate for consultation, if they have a *substantial*, direct effect on an Indian Tribe:

- Regulations or rulemaking
- Policies, guidance documents, directives
- Priority planning development
- Legislative comments

VIII. Compensation for Participation in the Consultation Process

ONRR does not compensate individuals or organizations - including Indian Tribes, Indian communities, and Indian organizations – for contributing information or comments to ONRR’s administrative or consultation process. Costs associated with Tribal participation are borne by the respective Tribal government.

When conducting Tribal consultation, Program Offices may find the need to acquire services, facilities, or other items necessary to complete consultation activities. When appropriate, ONRR may contract for the services of qualified individuals, firms, or organizations through the ONRR/ Interior Business Center acquisition and procurement procedures. Such services will not constitute “consultation” as used in this Policy. The ONRR Program Manager or their designee must fully comply with all Federal procurement rules. Program Offices must exercise care to prevent any expectations on the part of Tribal officials, Tribal elders, or individual Tribal members that ONRR will routinely pay for input from such parties.

IX. Supplemental Policies and Procedures

Program Offices will review existing policies and procedures to ensure they conform to this policy and the DOI Policy.

ONRR has no actions which affect Alaska Native Corporations; royalties due from lands owned by Alaska Native Corporations are paid directly to the Corporations. ONRR has determined that consistent with Federal law, no additional consultation policies, specific to Alaska Native Corporations, need to be developed.

X. Disclaimer

Except to the extent already established by law, this Policy is intended only to improve the internal management of ONRR, and is not intended to create any right, benefit, or additional trust responsibility, substantive or procedural, enforceable at law by a party against the DOI or any person. The intent of the ONRR Consultation Policy is to merely supplement the DOI Consultation Policy and not contradict nor supersede anything in the DOI Policy. ONRR also does not waive by virtue of this Policy any applicable privilege that it may hold.

Sources:

- Departmental Manual – <https://elips.doi.gov/elips/browse.aspx>
- Executive Order 13175 - <https://www.doi.gov/pmb/cadr/programs/native/Executive-Order-13175>
- Secretarial Order 3317 - <https://www.doi.gov/sites/doi.gov/files/migrated/tribes/upload/SO-3317-Tribal-Consultation-Policy.pdf>
- List of Federally recognized tribes - <https://www.federalregister.gov/documents/2017/01/17/2017-00912/indian-entities-recognized-and-eligible-to-receive-services-from-the-united-states-bureau-of-indian>