

ORDER

DOT 5301.1



U.S. Department
of Transportation

Office of the Secretary
of Transportation

November 16, 1999

**SUBJECT: Department of Transportation Programs, Policies, and Procedures
Affecting American Indians, Alaska Natives, and Tribes**

-
1. **PURPOSE.** To ensure that programs, policies, and procedures administered by the Department of Transportation (DOT) are responsive to the needs and concerns of American Indians, Alaska Natives, and tribes.
 2. **REFERENCES.** This list is not all-inclusive but is intended to help in the understanding of this DOT Order.
 - a. **Executive Orders and Memoranda:**
 - (1) Executive Order 12866, Regulatory Planning and Review (58 Federal Register 51739, October 4, **1993**), dated September 30, 1993.
 - (2) Executive Order 12875, Enhancing the **Intergovernmental** Partnership (58 Federal Register 58093, October 28, **1993**), dated October 26, 1993.
 - (3) Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 Federal Register 7629, February 16, **1994**), dated February 11, 1994.
 - (4) **Executive Order** 13007, Indian Sacred Sites (61 Federal Register 26771, May 29, **1996**), dated May 24, 1996.
 - (5) Executive Order 13021, Tribal Colleges and Universities (61 Federal Register 54929, October 23, 1996) dated October 19, 1996
 - (6) Executive Order 13045, Protection of Children from Environmental Health and Safety Risks (62 Federal Register 19885, April 23, 1997) dated April 21, 1997.
 - (7) Executive Order 13084, Consultation and Coordination with Indian Tribal Governments (63 Federal Register 27655, May 19, **1998**), dated May 14, 1998.
 - (8) Executive Order 13096, American Indian and Alaska Native Education (63 Federal Register 42681, August **11, 1998**), dated August 6, 1998.
 - (9) Policy Concerning Distribution of Eagle Feathers for Native American Religious Purposes, Memorandum for the Heads of Executive Departments and Agencies, signed by the President, April 29, 1994.
 - (10) Presidential Memorandum on Government-to-Government Consultation with Native American Tribal Governments (59 Federal Register 22951, May 4, 1994).
 - (11) Office of Management and Budget Memorandum M-95-20, September 21, 1995.

b. **DOT Orders:**

- (1) DOT 1000.12, Implementation of the Department of Transportation's Title VI Program, dated January 19, 1977.
- (2) DOT 1300.1, ONE DOT Management Strategy, dated September 18, 1998.
- (3) DOT **1325.2C**, DOT Correspondence Policy, dated October 29, 1993.
- (4) DOT 5610.1 C, Procedures for Considering Environmental Impacts, dated September 18, 1979.
- (5) DOT 5610.2, Environmental Justice in Minority Populations and **Low**-Income Populations, dated April 4, 1997.

c. **Statutes:**

- (1) Antiquities Act of 1906, as amended, 16 U.S.C. §§ 431-433 (1998).
- (2) Historic Sites Act of 1935, 16 U.S.C. §§ 461-467.
- (3) National Historic Preservation Act of 1966, as amended, 16 U.S.C. §§ **470-470w-6**.
- (4) National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321, 4321 note, **4331-4335, 4341-4346b**, 4347.
- (5) Alaska Native Claims Settlement Act of 1971 (ANCSA), as amended, 43 U.S.C. §§ **1601-1629g**.
- (6) Indian Self-Determination and Education Assistance Act of 1975, as amended, 25 U.S.C. § 450.
- (7) American Indian Religious Freedom Act of 1978, as amended, 42 U.S.C. § 1996.
- (8) Tribally Controlled Community College Assistance Act of 1978, 25 U.S.C. §§ 1801-1815.
- (9) Navajo Community College Assistance Act of 1978, 25 U.S.C. § **640a**.
- (10) Native American Graves Protection and Repatriation Act of 1990, 25 U.S.C. §§ 3001-3013.
- (11) Federally Recognized Indian Tribe List Act of 1994, as amended, 25 U.S.C. §§ 479a and 479-a-l (63 Federal Register 71941, December 30, 1998).

- (12) Tribal Self-Governance Act of **1994**, 25 U.S.C. §§ **458aa - 458hh**.
- (13) Equity in Educational Land Grant Status Act of 1994, 7 U.S.C. § 301 note.
- (14) Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 602, 658, **658a - 658g**, and Chapter 25.
- (15) Archeological Resources Protection Act of 1979, as amended, 16 U.S.C. §§ 470aa - 470mm.
- (16) Religious Freedom Restoration Act of 1992, 42 U.S.C. §§ 2000bb - 2000bb - 4.
- (17) Buy Indian Act (as amended **1994**), 25 U.S.C. § 47.
- (18) Transportation Act of 1966, as amended 49 U.S.C. § 303 (formerly known as Section **49**).
- (19) Intergovernmental Personnel Act 5 U.S.C. § 4701 (allows temporary employment of tribal government officials) and 42 U.S.C. §§ **4771- 4772** (authority allowing tribal officials to participate in Federal training)
- (20) Title VI of the Civil Rights Act of 1964, as amended 42 U.S.C. § **2000d**, et seq.

3. DEFINITIONS.

- a. **American Indian and Alaska Native.** "American Indian" refers to the term used in the OMB Statistical Policy Directive 15, "Race and Ethnic Standards for Federal Statistics and Administrative Reporting" to identify descendants of the populations indigenous to North America at the time of European discovery. American Indian includes Alaska Natives. "American Indian" however, is commonly used to refer to individuals of such populations residing in the lower 48 States. "Alaska Native" came into use with the passage of the Alaska Native Claims Settlement Act of 1971. Alaska Native is the usage preferred according to results of the Census Bureau's Race and Ethnic Targeted Test (RAETT), included in the Office of Management and Budget's Recommendations from the Interagency Committee for the Review of the Racial and Ethnic Standards to the Office of Management and Budget Concerning Changes to the Standards for the Classification of Federal Data on Race and Ethnicity; Notice **and** Proposed Request for Comments, 62 Federal Register 36873-36946 (July 9, 1997). Alaska Native refers to Alaskan Indians (including American and Canadian Indians living in Alaska), Eskimo, and Aleut. Note that "Alaska Native" and "American Indian" is not necessarily equivalent to the terms "tribe" and "tribal member." Therefore, since the application of specific statutes and executive orders vary, the definitions contained within these laws should be referred to for additional information.

- b. **Consultation.** Refers to meaningful and timely discussion in an understandable language with tribal governments during the development of regulations, policies, programs, plans, or matters that significantly or uniquely affect federally recognized American Indian and Alaska Native tribes and their governments. The specific guidelines and instructions for implementing the Unfunded Mandates Reform Act of 1995 found in OMB Memorandum M-95-20 and the recommendations in the Presidential Memorandum on **Government-to-Government Consultation with Native American Tribal Governments** dated April 29, 1994, also provide general principles for intergovernmental consultation under this Order.
- c. **DOT Component.** Refers to each agency, **office**, mode, administration or other entity of the Department of Transportation.
- d. **Environmental Justice.** Refers to avoiding, minimizing, and mitigating disproportionately high and adverse effects of DOT policies, programs, and activities on minority populations and low-income populations.
- e. **Federally Recognized Tribe.** Refers to the tribal government and tribal members of any tribe, band, pueblo, nation, or other organized group or community including any Alaska Native village or regional or village corporation (as defined in, or established pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 et seq.), or that is acknowledged by the Federal Government to constitute a tribe with a government-to-government relationship with the U.S. and eligible for the programs, services, and other relationships established by the U.S. for Indians because of their status as Indians.
- f. **Government-to-Government Relations.** Refers to the protocol for communicating between the Federal Government and tribes as sovereigns in accordance **with** the Presidential Memorandum on Government-to-Government Consultation with Native American Tribal Governments dated April 29, 1994. The first point of contact should be the Chairman of the Tribal Council or the President of the Tribe.
- g. **Indian Preference.** Refers to a preference, typically in employment and contracts, based on the political relationship between the U.S. and members of federally recognized tribes. Indian preference applies only to members of federally recognized tribes and not to individuals who are racially classified as "Indians" but who are not members of federally recognized tribes.
- h. **ONE DOT Management Strategy.** Refers to the Department's management strategy and intermodal collaboration that builds on the strengths of DOT modes and the Office of the Secretary of Transportation (OST) to achieve the Department's mission and goals as prescribed in **paragraph 2b(2)**.
- i. **Tribe.** The term "tribe," when used in its ethnographical sense to describe a cultural group, does not necessarily confer legal status on a tribe. Therefore, for purposes of this Order, the term "tribe" refers to "Indian tribe" or "Federally recognized tribe" and may also refer to State recognized tribes which are not Federally recognized but which are eligible for certain Federal benefits and privileges under specific Federal laws.

- j. **Tribal Colleges and Universities.** Refers to those institutions cited in Section 532 of the Equity in Educational Land Grant Status Act of 1994 (7 U.S.C. 301 note) and any other institution that qualifies for funding under the Tribally Controlled Community College Assistance Act of 1978 (25 U.S.C. 1801 et seq.) and Navajo Community College, authorized in the Navajo Community College Assistance Act of 1978 (Public Law **95-471**), Title II (25 U.S.C. 640a note).
- k. **Tribal Government.** Refers to the recognized government of a tribe.
- l. **Tribal Member.** Refers to a member of a tribe as determined by tribal membership rules.
- m. **Tribal Sovereignty.** Refers to the unique legal status of federally recognized Indian tribes as set forth in the U. S. Constitution, treaties, and Federal statutes, executive orders, and court decisions, which establish these tribes, as domestic dependent nations subject to the protection of the U.S. Government. As domestic dependent nations, these tribes exercise inherent sovereign powers over their members and territory unless explicitly removed by Congress.
- n. **Trust Resources.** Refers to natural resources such as, but not limited to, water, fish, wildlife, air, minerals, natural gas, oil, forests, plants, land, rivers, cultural resources, that are held in trust by the Federal Government on behalf of the federally recognized tribes.

4. **BACKGROUND.**

- a. American Indians and Alaska Natives have a special place in our Nation's history and culture, and certain laws and policies apply to them.
- b. The Federal Government has a unique legal and political relationship with federally recognized tribes that have been found by the U.S. Supreme Court to be sovereign, domestic dependent nations, subject to the protection of the United States.
- c. The Federal Government has a moral obligation of the highest responsibility and trust for resources held by the Federal Government on behalf of federally recognized tribes and their members, who are properly concerned that trust resources should be conserved for the benefit of present and future generations.
- d. The Federal Government, in carrying out its trust responsibility, has the duty to act in good faith and loyalty to the best interests of American Indians, Alaska Natives, and tribes, among these being their interest in self-government and that it is the express policy of Congress and the President to strengthen tribal self-governance.
- e. In 1975, Congress passed the Indian Self-Determination and Education Assistance Act (Public Law 93-638). This Act recognized the obligation of the United States to respond to the strong expression of the Indian people for self-

determination by assuring maximum Indian participation in the direction of Federal services.

- f. On April 29, 1994, a Presidential Memorandum was issued, entitled, "Government-to-Government Relations with Native American Tribal Governments." This Memorandum directed all Executive Departments and Agencies to implement activities affecting Indian tribal rights or trust resources by consulting with tribes in a knowledgeable, sensitive manner respectful of tribal sovereignty.
 - g. Executive Order 13084, dated May 14, 1998, entitled, "Consultation and Coordination with Indian Tribal Governments," directs Federal agencies to work with Indian tribes by: establishing regular and meaningful consultation and collaboration with them on Federal matters that significantly or uniquely affect their communities; reducing the imposition of unfunded mandates on them; and streamlining the application process and availability of waivers to them.
5. **POLICY.** In conducting and administering activities and programs, and fostering relationships with American Indians, Alaska Natives, and tribes, all components within DOT must, to the extent practicable and permitted by law:
- a. **Carryout** DOT's mission, strategic goals, policies, programs, and activities affecting American Indians, Alaska Natives, and tribes in a manner that reflects a high commitment to the ONE DOT management strategy.
 - b. Consult with Indian tribes before taking any actions that may significantly or uniquely affect them. This process may be supplemented by seeking information from other relevant sources and may be required by specific laws, regulations, and executive orders. This includes, but is not limited to, traditional leaders or elders and associations of tribal officials.
 - c. Work with federally recognized tribes and their designated representatives on a government-to-government basis respecting their rights to represent their respective interests.
 - d. Recognize American Indian and Alaska Native statutory preferences in employment, Federal financial assistance arrangements and contracting, subject to eligibility.
 - e. Assess the environmental impact of ROT activities on tribal trust resources and ensure that tribal interests are considered before DOT activities are undertaken. This assessment must include ensuring that the concerns of federally recognized tribes, regarding the potential impact on trust resources, are properly addressed in agency policies, programs, and activities.
 - f. Respond effectively to the transportation concerns of American Indians and Alaska Natives related to environmental justice, children's safety and environmental health risks, occupational health and safety, and other environmental matters.
 - g. Streamline DOT procedures for working directly with tribes on activities that affect trust resources or tribal self-governance of the tribes.

- h. Seek tribal representation in relevant DOT sponsored meetings, negotiated rulemaking efforts, forums, advisory committees, listening sessions, focus groups, public surveys, research protocols, and data collection activities.
- i. Design solutions and tailor DOT programs as appropriate to address specific or unique needs of tribal communities.
- j. Consider opportunities under the Intergovernmental Personnel Act for temporarily hiring tribal members and publicizing eligibility of tribal members to participate in Federal training activities
- k. Foster opportunities such as internships, fellowships, scholarships, or other related DOT programs in education and research for American Indians, and Alaska Natives.
- l. Include tribal colleges and universities in DOT educational, research, and program activities as prescribed in paragraph **2a(5)**. This may also include helping the institutions through such activities as providing DOT personnel as temporary instructors and providing surplus property and equipment.
- m. Support government-wide educational efforts aimed at American Indian and Alaska Native students such as improving literacy and mathematics skills and increasing high school completion rates.
- n. Ensure non-discrimination in employment of and services to American Indians and Alaska Natives.
- o. Integrate information about Federal laws and policies on relations with American Indians and Alaska Natives into DOT training.
- p. Treat correspondence from leaders of federally recognized tribes in the same manner as congressional correspondence as prescribed in the DOT Correspondence Manual (refer to paragraph **2b(3)** of this document).
- q. Cooperate with other Federal, State, or local agencies to accomplish **government-to-government relations, carryout** consultation, address regulatory issues, and solve problems in accordance with the policy objectives above.

6. **RESPONSIBILITIES OF EACH DOT COMPONENT.** In carrying out policies, programs, and activities affecting American Indians, Alaska Natives, and tribes, each DOT component must to the extent practicable and permitted by law:

- a. Ensure that an effective mechanism is in place to achieve the following goals:
 - (1) Improve communication with American Indians, Alaska Natives, and tribes to respond more effectively to their transportation concerns.
 - (2) Develop an intergovernmental consultation process for that component in coordination with the designated office established under paragraph 7 of this Order.

- (3) Adapt processes to recognize American Indian, Alaska Native, and tribal culture and traditions.
 - (4) Address American Indian, Alaska Native, and tribal transportation issues and concerns under the ONE DOT management strategy.
 - (5) Ensure consistency within procedures, regulations, and guidance of the various DOT components for addressing American Indian, Alaska Native, and tribal transportation issues.
 - (6) Maximize cooperation and coordination with the OST, other DOT components, other Federal agencies, and appropriate public and private organizations on transportation matters affecting American Indians, Alaska Natives, and tribes.
 - (7) Share information about DOT components, programs, activities, and accomplishments as they relate to American Indian, Alaska Native and tribal matters.
 - (8) Maximize participation of tribal colleges and universities in DOT education, employment, and mission-related programs.
 - (9) Avoid infringing on tribal lands and accommodate access to and ceremonial use of sacred sites and ancestral burial grounds on Federal and tribal lands to the extent practicable and consistent with essential agency functions.
 - (10) Invite participation of American Indian, Alaska Native or other tribal employees of DOT to help achieve communication goals.
- b. Periodically review efforts to achieve the goals listed in paragraphs **6a(1)** through **6a(10)** and take appropriate action, as necessary, to improve accomplishment of established goals.
 - c. Designate a point of contact, experienced in working with tribes or knowledgeable in laws, regulations, and policies regarding federally recognized American Indians, Alaska Natives, and tribes, to serve as a resource for the Department.
7. **DESIGNATED DOT OFFICE.** The Secretary will designate an office to facilitate effective implementation of the policies and requirements of this Order. In this regard, the designated office will advise and make recommendations to the Secretary of Transportation on American Indian, Alaska Native, and tribal policies, issues, programs, and activities. The designated office's mission and responsibilities are further described below.
- a. **Mission.** To facilitate a consistent Departmental policy, and strategy relative to American Indian, Alaska Native, and tribal transportation matters to the extent practicable and permitted by law.
 - b. **Duties.** The designated DOT Office must perform the following duties:
 - (1) Provide Departmental oversight, guidance, direction, and recommendations to the Secretary and DOT components with regard to implementing this Order and achieving the goals listed in paragraphs **6a(1)** through **6a(10)** of this Order. This includes providing summary information and/or reports on the Department's efforts as described in paragraph 6b.

- (2) Educate DOT employees on American Indian, Alaska Native and tribal laws, policies, programs, activities, culture, and traditions.
- (3) Stress the importance of tribal involvement in transportation planning and **decision-making**.
- (4) Ensure tribes' involvement in DOT decision-making that significantly or uniquely affects them.
- (5) Encourage direct relationships with the tribes.
- (6) Exercise creativity and flexibility in fostering partnerships among the tribes, States, and local governments.
- (7) Ensure implementation of the goals listed in paragraphs **6a(1)** through **6a(10)** of this Order through the following:
 - (a) **Improve Communication.**
 - 1 Maintain a current directory of DOT programs, including a list of contact persons, for which American Indians, Alaska Natives, and tribes are eligible.
 - 2 Coordinate and promote innovative partnerships among Federal, State, and local government programs and activities that will have the optimal positive effect on American Indians, Alaska Natives, and tribes.
 - 3 Serve on the White House Domestic Policy Council/Native American Subcommittee.
 - 4 Participate in interagency forums on American Indian and Alaska Native issues or concerns.
 - 5 Seek opportunities for training and information exchange via meetings, conferences, workshops, and forums.
 - 6 Facilitate communication and dialogue among Federal, State, tribal representatives, and other government entities.
 - 7 Ensure the DOT **website** focusing on DOT programs, policies, activities, and issues affecting American Indians, Alaska Natives, and tribes convey the ONE DOT message.
 - 8 Determine through information or recommendations from tribes the best communication channels to disseminate DOT information.
 - 9 Establish a mechanism for initiating contact and providing information about DOT programs, policies, and activities to tribal officials using their preferred protocol.

(b) **Employ the ONE DOT Management Strategy.**

- 1 Facilitate full and open internal and external communications that allow DOT to speak with one voice concerning American Indian, Alaska Native and tribal transportation concerns.
- 2 Maintain a point of contact to address, coordinate, and resolve American Indian, Alaska Native,, and tribal policy, programs, and activities from a ONE DOT perspective while providing for maximum participation by DOT components and recognizing the unique nature of the programs and operations of each component.

(c) **Improve Regulations and Guidance.**

- 1 Assist and make recommendations concerning the development, establishment, and maintenance of Departmental American Indian, Alaska Native., and tribal policy, guidance, procedures and regulations.
- 2 Participate in Department-wide review and resulting modification of existing regulations affecting American Indian, Alaska Natives, and tribes.

This Order is intended to improve the internal management of the Department, consistent with paragraph 1 of this Order, and is not intended to create any right enforceable in any cause of action by any party against the U.S., its agencies, officers or any person. In addition, this Order should not be construed to create any right to judicial review involving the compliance or noncompliance with this Order by the Department, its operating administrations, its **officers**, or any other person.

SECRETARY OF TRANSPORTATION


Rodney E. Slater