

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 3587
OFFERED BY MR. GRIJALVA OF ARIZONA**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “RESPECT Act”.

3 SEC. 2. TABLE OF CONTENTS.

4 The table of contents for this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Table of contents.
- Sec. 3. Universal definitions.

TITLE I—ASSESSING TRIBAL IMPACTS

- Sec. 101. Designation of lead agency.
- Sec. 102. Assessing Tribal impacts.

TITLE II—CONSULTATION WITH TRIBAL GOVERNMENTS IN THE
CONTIGUOUS STATES

- Sec. 201. Definitions.

Subtitle A—Standards for Consultation

- Sec. 211. Standards for consultation.

Subtitle B—Consultation Procedures for a Proposed Covered Activity With
Tribal Impacts

- Sec. 221. Consultation outreach for a covered activity.
- Sec. 222. Conclusion of consultation meetings for a proposed covered activity.
- Sec. 223. Consultation outcome for a proposed covered activity.

Subtitle C—Consultation Procedures for a Proposed Regulatory Action With
Tribal Impacts

- Sec. 231. Proposed regulatory action with Tribal impacts.
- Sec. 232. Consultation procedures for a proposed regulatory action with Tribal impacts that are regional or national in scope.

Sec. 233. Consultation outcome for proposed regulatory action with Tribal impacts.

Subtitle D—Judicial Review

Sec. 241. Judicial review.

TITLE III—TRILATERAL CONSULTATION IN ALASKA

Sec. 301. Definitions.

Subtitle A—Standards for Trilateral Consultation in Alaska

Sec. 311. Standards for trilateral consultation.

Subtitle B—Trilateral Consultation Procedures for a Proposed Covered Activity With Tribal Impacts in Alaska

Sec. 321. Trilateral consultation outreach for a proposed covered activity in Alaska.

Sec. 322. Conclusion of trilateral consultation meetings for a proposed covered activity in Alaska.

Sec. 323. Trilateral consultation outcome for a proposed covered activity in Alaska.

Subtitle C—Trilateral Consultation Procedures for a Proposed Regulatory Action With Tribal Impacts in Alaska

Sec. 331. Proposed regulatory action with Tribal impacts in Alaska.

Sec. 332. Trilateral consultation procedures for a proposed regulatory action with Tribal impacts that are regional or national in scope.

Sec. 333. Trilateral consultation outcome for a proposed regulatory action with Tribal impacts in Alaska.

Subtitle D—Judicial Review

Sec. 341. Judicial review.

TITLE IV—DOCUMENTATION AND REPORTING

Sec. 401. Documentation and reporting.

Sec. 402. Sensitive information.

TITLE V—IMPLEMENTATION AND TRAINING

Sec. 501. Designated agency and bureau officials.

Sec. 502. Agency consultation policy.

Sec. 503. Agency consultation policy during emergency periods.

Sec. 504. Training.

TITLE VI—TRIBAL SOVEREIGNTY

Sec. 601. Tribal sovereignty.

TITLE VII—SAVINGS CLAUSE

Sec. 701. Savings clause.

1 **SEC. 3. UNIVERSAL DEFINITIONS.**

2 For the purposes of this Act:

3 (1) **ALASKA NATIVE CORPORATION.**—The term
4 “Alaska Native Corporation” means a Regional Cor-
5 poration, Village Corporation, Urban Corporation, or
6 Group Corporation organized under the laws of the
7 State of Alaska in accordance with the Alaska Na-
8 tive Claims Settlement Act (43 U.S.C. 1601 et seq.).

9 (2) **AGENCY; FEDERAL AGENCY.**—The terms
10 “agency” and “Federal agency” have the meaning
11 given the term “agency” in section 551 of title 5,
12 United States Code.

13 (3) **COVERED ACTIVITY.**—The term “covered
14 activity” means a project proposed by a Federal
15 agency that—

16 (A) is carried out by or on behalf of a Fed-
17 eral agency;

18 (B) requires a Federal permit, license, or
19 approval;

20 (C) is subject to State or local regulation
21 administered pursuant to a delegation of Fed-
22 eral authority; or

23 (D) receives funding from a Federal agen-
24 cy.

25 (4) **LEAD AGENCY.**—The term “lead agency”
26 means—

1 (A) with respect to a covered activity or
2 proposed regulatory action carried out by a sin-
3 gle Federal agency, the Federal agency carrying
4 out such covered activity;

5 (B) with respect to a covered activity or
6 proposed regulatory action carried out by more
7 than one Federal agency—

8 (i) the Federal agency designated as
9 lead agency under section 101; or

10 (ii) each Federal agency carrying out
11 such covered activity individually.

12 (5) PROPOSED REGULATORY ACTION.—The
13 term “proposed regulatory action” means any regu-
14 lation, policy, guidance, or grant funding formula
15 change that is proposed by a Federal agency.

16 (6) SACRED SITE.—The term “sacred site”
17 means any geophysical or geographical area or fea-
18 ture that is identified by a Tribal Government—

19 (A) as sacred by virtue of its established
20 religious significance to, or ceremonial use in, a
21 Tribal religion; or

22 (B) to be of established cultural signifi-
23 cance.

24 (7) STANDARD METHOD OF WRITTEN COMMU-
25 NICATION.—The term “standard method of written

1 communication” means the mode of written commu-
2 nication that the agency uses in the typical course
3 of communicating with persons outside the Federal
4 Government.

5 (8) TRIBAL GOVERNMENT.—The term “Tribal
6 Government” means the governing body of any In-
7 dian or Alaska Native Tribe, band, nation, pueblo,
8 village, community, component band or component
9 reservation, individually identified (including par-
10 enthetically) in the list published most recently as of
11 the date of enactment of this Act pursuant to sec-
12 tion 104 of the Federally Recognized Indian Tribe
13 List Act of 1994 (25 U.S.C. 5131).

14 (9) TRIBAL IMPACT.—The term “Tribal im-
15 pact” means an impact on any of the following:

16 (A) Tribal lands, cultural practices, re-
17 sources, or access to traditional areas of cul-
18 tural or religious importance.

19 (B) The protected rights of a Tribe,
20 whether or not such rights are enumerated in
21 a treaty, including water, hunting, gathering,
22 and fishing rights.

23 (C) The ability of a Tribal Government to
24 govern or provide services to its members.

1 (D) A Tribal Government’s formal rela-
2 tionship with the Federal Government.

3 (E) The Federal Government’s trust re-
4 sponsibility to Tribal Governments.

5 (F) The ability of an Alaska Native entity
6 to provide services to Alaska Natives.

7 (10) TRIBAL IMPACT STATEMENT.—The term
8 “Tribal impact statement” means a Tribal impact
9 statement produced under section 102.

10 (11) TRIBAL LAND.—The term “Tribal land”
11 means any—

12 (A) land located within the boundaries of
13 an Indian reservation, pueblo, or rancharia;

14 (B) land not located within the boundaries
15 of an Indian reservation, pueblo, or rancharia,
16 the title to which is held—

17 (i) in trust by the United States for
18 the benefit of an Indian Tribe or an indi-
19 vidual Indian;

20 (ii) by an Indian Tribe or an indi-
21 vidual Indian, subject to restriction against
22 alienation under laws of the United States;
23 or

24 (iii) by a dependent Indian commu-
25 nity;

1 (C) land that is owned by a Tribal Govern-
2 ment and was conveyed by the United States to
3 an Alaska Native Corporation pursuant to the
4 Alaska Native Claims Settlement Act (43
5 U.S.C. 1601 et seq.), or that was conveyed by
6 the United States to an Alaska Native Corpora-
7 tion in exchange for such land;

8 (D) land located in a census tract, as of
9 the most recent decennial census, in which the
10 majority of residents are Natives (as defined in
11 section 3(b) of the Alaska Native Claims Settle-
12 ment Act (43 U.S.C. 1602(b))); and

13 (E) land located in a census tract, as of
14 the most recent decennial census, in which the
15 majority of residents are persons who are en-
16 rolled members of any Indian or Alaska Native
17 Tribe, band, nation, pueblo, village, community,
18 component band or component reservation, indi-
19 vidualy identified (including parenthetically) in
20 the list published most recently as of the date
21 of enactment of this Act pursuant to section
22 104 of the Federally Recognized Indian Tribe
23 List Act of 1994 (25 U.S.C. 5131).

1 (10) TRIBAL IMPACT STATEMENT.—The term
2 “Tribal impact statement” means a Tribal impact
3 statement produced under section 102.

4 (12) ALASKA NATIVE ENTITIES.—The term
5 “Alaska Native entities” means an Alaska Native
6 Corporation or Tribal Organization in Alaska.

7 (13) TRIBAL ORGANIZATION IN ALASKA.—The
8 term “Tribal Organization in Alaska” means a
9 “Tribal Organization”, as defined in section 4 of the
10 Indian Self-Determination and Education Assistance
11 Act (25 U.S.C. 5304), located primarily in the State
12 of Alaska that provides services to Alaska Natives.

13 **TITLE I— ASSESSING TRIBAL** 14 **IMPACTS**

15 **SEC. 101. DESIGNATION OF LEAD AGENCY.**

16 If more than one Federal agency is responsible for
17 a covered activity or proposed regulatory action, those
18 agencies shall designate one such agency as the lead agen-
19 cy for that covered activity or proposed regulatory action
20 for the purposes of this Act.

21 **SEC. 102. ASSESSING TRIBAL IMPACTS.**

22 (a) ASSESSING TRIBAL IMPACTS.—As early as pos-
23 sible in the planning stage of a covered activity or pro-
24 posed regulatory action, the lead agency shall prepare a
25 Tribal impact statement that,—

1 (1) identifies any potential Tribal impacts of
2 the covered activity or regulatory action;

3 (2) includes the scope of the covered activity or
4 proposed regulatory action being considered;

5 (3) includes a list of affected Tribal Govern-
6 ments;

7 (4) in the case of a covered activity near Tribal
8 lands, makes a good faith effort to identify—

9 (A) areas that contain sacred sites or prop-
10 erties of traditional religious and cultural sig-
11 nificance that might be affected, including areas
12 that may not be currently identified as such by
13 a Federal agency;

14 (B) areas where off-reservation
15 usufructuary rights exist, such as hunting, fish-
16 ing and gathering rights;

17 (C) water or other natural resources that
18 may affect Tribal lands or impact the interests
19 of Tribal Governments; and

20 (5) In the case of identified impacts on Tribal
21 lands in Alaska, or on programs and services admin-
22 istrated by Alaska Native entities on behalf of Alas-
23 ka Natives, the lead agency shall include a list of af-
24 fected Alaska Native entities.

1 (b) DETERMINATION OF SCOPE FOR PROPOSED REG-
2 ULATORY ACTIONS.—A Tribal impact statement prepared
3 with respect to a proposed regulatory action shall identify
4 whether the proposed regulatory action primarily—

5 (1) has Tribal impacts on individual Tribal
6 Governments in the contiguous States;

7 (2) has Tribal impacts in the State of Alaska;

8 or

9 (3) is regional or national in scope.

10 (c) PUBLISHING THE TRIBAL IMPACT STATE-
11 MENT.—

12 (1) COVERED ACTIVITY.—

13 (A) TRIBAL IMPACT.—The Tribal impact
14 statement for a covered activity shall be pub-
15 lished in the Federal Register before expending
16 funds on the covered activity.

17 (B) FINDING OF NO TRIBAL IMPACT.—If
18 the lead agency determines in a Tribal impact
19 statement that the covered activity will not have
20 a Tribal impact, a Finding of No Tribal Impact
21 shall be published in the Federal Register be-
22 fore expending funds on the covered activity.

23 (2) REGULATORY ACTION.—

24 (A) ADVANCE NOTICE OF PROPOSED RULE-
25 MAKING.—If the lead agency determines in a

1 Tribal impact statement that the regulatory ac-
2 tion may have a Tribal impact, the lead agency
3 shall publish an Advance Notice of Proposed
4 Rulemaking in the Federal Register that in-
5 cludes the Tribal impact statement.

6 (B) FINDING OF NO TRIBAL IMPACT.—If
7 the lead agency determines in a Tribal impact
8 statement that the regulatory action will not
9 have a Tribal impact, a Finding of No Tribal
10 Impact shall be published in the Federal Reg-
11 ister as part of the Notice of Proposed Rule-
12 making.

13 (d) TRIBAL REQUEST FOR RECONSIDERATION.—A
14 Tribal Government may request a reconsideration of a
15 Tribal impact statement from the lead agency after its in-
16 clusion in the Federal Register. Upon receipt of a request
17 for reconsideration, the lead agency shall determine if the
18 request for reconsideration presents new information or
19 supplements existing information in the Tribal impact
20 statement. The lead agency shall then respond to the re-
21 quest for reconsideration by either—

22 (1) revising the Tribal impact statement to in-
23 clude the requesting Tribal government and noti-
24 fying the requesting Tribal Government that the
25 lead agency shall proceed with consultation; or

1 (2) denying the requesting Tribal Government's
2 inclusion in the Tribal impact statement and stating
3 the detailed reasons for denying the request for re-
4 consideration.

5 **TITLE II—CONSULTATION WITH**
6 **TRIBAL GOVERNMENTS IN**
7 **THE CONTIGUOUS STATES**

8 **SEC. 201. DEFINITIONS.**

9 For the purposes of this title:

10 (1) CONSULTATION.—The term “consultation”
11 means the direct, timely, and interactive process of
12 receiving meaningful input from Tribal Governments
13 in the contiguous States regarding covered activities
14 or regulatory actions proposed by a Federal agency
15 that may have impacts on one or more Tribal Gov-
16 ernments in the contiguous States.

17 (2) CONSULTATION MEETING.—The term “trib-
18 al consultation meeting” means a meeting held be-
19 tween a Federal agency and a Tribal Government in
20 the contiguous States.

21 **Subtitle A—Standards for**
22 **Consultation**

23 **SEC. 211. STANDARDS FOR CONSULTATION.**

24 (a) REQUIRED CONSULTATION.—Each Federal agen-
25 cy shall consult with affected Tribal Governments in the

1 contiguous States before expending funds on a covered ac-
2 tivity or proposed regulatory action that may have a Tribal
3 impact.

4 (b) STRUCTURE OF CONSULTATION MEETINGS.—
5 Each consultation meeting shall—

6 (1) be structured to allow for meaningful and
7 respectful interaction among all participants, includ-
8 ing allowing adequate time for introductions and any
9 ceremonial proceedings; and

10 (2) conclude with planning for any subsequent
11 consultation meetings, if necessary.

12 (c) CONSULTATION MEETING OBJECTIVES.—The
13 lead agency shall make a good faith effort through sus-
14 tained interaction and collaboration during consultation
15 meetings to reach a consensus resulting in the execution
16 of a memorandum of agreement between the lead agency
17 and the affected Tribal Government in the contiguous
18 States regarding the covered activity or proposed regu-
19 latory action.

20 (d) PAYMENT FOR DOCUMENTATION WORK.—If the
21 lead agency asks a Tribal Government in the contiguous
22 States for specific information or documentation reason-
23 ably necessary for meaningful consultation under this Act
24 which fulfills the duties of a Federal agency in a role simi-
25 lar to that of a consultant or contractor, then at the re-

1 quest of the Tribal Government in the contiguous States
2 the lead agency shall pay for such services.

3 (e) WITHDRAWAL FROM CONSULTATION.—Tribal
4 Governments in the contiguous States may withdraw from
5 the consultation process under this title by notifying the
6 lead agency of their intent to withdraw. In such case, the
7 lead agency shall provide the affected Tribal Government
8 in the contiguous States with the opportunity to submit
9 a written statement, explanation, or comment on the con-
10 sultation proceedings which shall be made part of the con-
11 sultation record pursuant to section 401.

12 **Subtitle B—Consultation Proce-**
13 **dures for a Proposed Covered**
14 **Activity With Tribal Impacts**

15 **SEC. 221. CONSULTATION OUTREACH FOR A COVERED AC-**
16 **TIVITY.**

17 (a) CONSULTATION REQUEST.—With respect to any
18 proposed covered activity that the lead agency determines
19 in the Tribal impact statement may have a Tribal impact,
20 the lead agency shall—

21 (1) transmit, via the agency’s standard method
22 of written communication, a formal request for a
23 consultation meeting, a description or copy of the
24 covered activity, and a copy of the Tribal impact
25 statement, to each affected Tribal Government in

1 the contiguous States identified in the Tribal impact
2 statement;

3 (2) follow up not later than 10 business days
4 after transmitting such request to ensure receipt of
5 the documents by each affected Tribal Government
6 in the contiguous States; and

7 (3) if the documents were not received by an af-
8 fected Tribal Government in the contiguous States,
9 retransmit all materials to that affected Tribal Gov-
10 ernment in the contiguous States via a form of writ-
11 ten communication that is suitable to the recipient.

12 (b) RESPONSE TO CONSULTATION REQUEST.—If an
13 affected Tribal Government in the contiguous States—

14 (1) accepts the lead agency’s request for con-
15 sultation, then the consultation process shall com-
16 mence pursuant to the provisions of this subtitle; or

17 (2) declines the lead agency’s request for con-
18 sultation, then consultation with such Tribal Govern-
19 ment in the contiguous States is not required and
20 the Tribal impact statement shall be amended to re-
21 flect the declination of the affected Tribal Govern-
22 ment in the contiguous States and shall be made
23 part of the record pursuant to section 401.

24 (c) DATE AND FORMAT FOR CONSULTATION MEET-
25 INGS.—The lead agency shall negotiate with each affected

1 Tribal Government in the contiguous States that accepts
2 a request for consultation under subsection (b)(1) to de-
3 termine the date and format for the consultation meetings
4 relating to the proposed covered activity.

5 (d) NON-RESPONSE TO CONSULTATION REQUEST.—
6 If, after a good faith effort, the lead agency does not re-
7 ceive a written response to the request for consultation
8 under subsection (a), the lead agency may proceed with
9 the proposed covered activity and provide the affected
10 Tribal Government in the contiguous States with a written
11 notification and explanation for its decision to proceed
12 without consultation, which shall be made part of the con-
13 sultation record pursuant to section 401.

14 **SEC. 222. CONCLUSION OF CONSULTATION MEETINGS FOR**
15 **A PROPOSED COVERED ACTIVITY.**

16 (a) CONCLUSION WITH A MEMORANDUM OF AGREE-
17 MENT.—

18 (1) IN GENERAL.—Consultation meetings under
19 this subtitle regarding a proposed covered activity
20 may conclude upon the execution of a memorandum
21 of agreement between the lead agency and the af-
22 fected Tribal Government in the contiguous States.
23 The memorandum of agreement—

24 (A) may address multiple covered activities
25 if the activities are similar in nature, are re-

1 regional or national in scope, or where routine
2 management activities are undertaken at Fed-
3 eral facilities or land management units;

4 (B) may establish standard processes for
5 certain categories of activities defined in the
6 memorandum of agreement; and

7 (C) shall—

8 (i) include a provision for monitoring
9 and reporting on the implementation of the
10 covered activity;

11 (ii) include provisions for reconsider-
12 ation if the activity has not been completed
13 within a specified time; and

14 (iii) include provisions to address new
15 discoveries, which may include halting the
16 activity and returning to the consultation
17 stage.

18 (2) AMENDMENT.—The executed memorandum
19 of agreement may only be amended with the written
20 consent of all signatories.

21 (b) CONCLUSION WITHOUT A MEMORANDUM OF
22 AGREEMENT.—If, after a good faith effort, the lead agen-
23 cy determines that further consultation meetings regard-
24 ing a proposed covered activity will not be productive, it
25 may conclude consultation meetings without a memo-

1 random of agreement. The lead agency shall provide the
2 affected Tribal Government in the contiguous States with
3 a written notification and explanation for its decision, in-
4 cluding identification of any legal, policy, or factual bar-
5 riers that prevented the lead agency from reaching agree-
6 ment with the affected Tribal Government in the contig-
7 uous States, which shall be made part of the consultation
8 record pursuant to section 401.

9 **SEC. 223. CONSULTATION OUTCOME FOR A PROPOSED COV-**
10 **ERED ACTIVITY.**

11 (a) PRELIMINARY CONSULTATION OUTCOME.—

12 (1) TRANSMISSION OF DOCUMENT.—Upon the
13 conclusion of consultation meetings, the lead agency
14 shall transmit a preliminary outcome document via
15 such agency’s standard method of written commu-
16 nication to each affected Tribal Government in the
17 contiguous States that shall—

18 (A) state the decision to proceed or not
19 proceed with the proposed covered activity;

20 (B) state the rationale for the decision;
21 and

22 (C) specifically address any points where
23 the decision conflicts with the request of an af-
24 fected Tribal Government in the contiguous

1 States, including a detailed explanation of why
2 the request was not accepted.

3 (2) REQUIRED FOLLOWUP.—

4 (A) FOLLOW UP.—The lead agency shall,
5 not later than 10 business days after the date
6 on which a preliminary outcome document is
7 transmitted under paragraph (1), follow up
8 with each affected Tribal Government in the
9 contiguous States that has not acknowledged
10 receipt to confirm receipt of such document.

11 (B) RETRANSMISSION.—The lead agency
12 shall retransmit the preliminary outcome docu-
13 ment transmitted under paragraph (1) to any
14 affected Tribal Government in the contiguous
15 States in such form of written communication
16 as the recipient requests.

17 (b) TRIBAL RESPONSE PERIOD.—The lead agency
18 shall provide a period of not less than 45 days after
19 issuance of the preliminary outcome document under sub-
20 section (a)(1) for a response by an affected Tribal Govern-
21 ment in the contiguous States.

22 (c) FINAL OUTCOME DOCUMENT.—

23 (1) TRANSMISSION OF DOCUMENT.—After expi-
24 ration of period described in subsection (b), the lead
25 agency shall transmit a final outcome document via

1 such agency's standard method of written commu-
2 nication to each affected Tribal Government in the
3 contiguous States that shall—

4 (A) state the decision to proceed or not
5 proceed with the proposed covered activity;

6 (B) state the rationale for the decision;

7 (C) list any changes to the preliminary de-
8 cision in response to comments received from
9 an affected Tribal Government in the contig-
10 uous States during the Tribal Response Period;
11 and

12 (D) specifically address any points where
13 the decision conflicts with the request of an af-
14 fected Tribal Government in the contiguous
15 States, including a detailed explanation of why
16 the request was not accepted.

17 (2) REQUIRED FOLLOW UP.—

18 (A) FOLLOW UP.—The lead agency shall,
19 not later than 10 business days after the date
20 on which a final outcome document is trans-
21 mitted under paragraph (1), follow up with
22 each affected Tribal Government in the contig-
23 uous States that has not acknowledged receipt
24 to confirm receipt of such document.

1 (B) RETRANSMISSION.—The lead agency
2 shall retransmit the final outcome document
3 transmitted under paragraph (1) to any af-
4 fected Tribal Government in the contiguous
5 States in such form of written communication
6 as the recipient requests.

7 (d) SUMMARY OF CONSULTATION PROCESS.—Upon
8 confirmation of receipt of the final outcome document by
9 the affected Tribal Governments in the contiguous States,
10 the lead agency shall publish a summary of the consulta-
11 tion process. The summary shall consist of—

12 (1) a description of the extent of the lead agen-
13 cy's consultation efforts with affected Tribal Govern-
14 ments in the contiguous States;

15 (2) a summary of the nature of any concerns of
16 affected Tribal Governments in the contiguous
17 States;

18 (3) a statement of the extent to which the con-
19 cerns of affected Tribal Governments in the contig-
20 uous States have been met; and

21 (4) the lead agency's position supporting the
22 need to proceed with the activity.

1 **Subtitle C—Consultation Proce-**
2 **dures for a Proposed Regu-**
3 **latory Action With Tribal Im-**
4 **pacts**

5 **SEC. 231. PROPOSED REGULATORY ACTION WITH TRIBAL**
6 **IMPACTS.**

7 (a) CONSULTATION REQUEST.—Upon publication of
8 the Advance Notice of Proposed Rulemaking pursuant to
9 section 102(c)(2), the lead agency shall transmit, via the
10 agency’s standard method of written communication—

11 (1) in the case of a proposed regulatory action
12 with Tribal impacts as identified in section
13 102(b)(1), a formal request for a consultation meet-
14 ing, a copy of the Advance Notice of Proposed Rule-
15 making, and a copy of the Tribal impact statement
16 to each affected Tribal Government in the contig-
17 uous States identified in the Tribal impact state-
18 ment; or

19 (2) in the case of a proposed regulatory action
20 with Tribal impacts as identified in section
21 102(b)(3), a formal notice that regional or national
22 consultation meetings will occur on the proposed
23 regulatory action, a copy of the Advance Notice of
24 Proposed Rulemaking, and a copy of the Tribal im-
25 pact statement to each affected Tribal Government

1 in the contiguous States identified in the Tribal im-
2 pact statement.

3 (b) REQUIRED FOLLOW UP.—

4 (1) IN GENERAL.—In the case of a consultation
5 request transmitted under subsection (a)(1), the lead
6 agency shall follow up not later than 5 business days
7 after the date of such request to ensure receipt of
8 the documents by each affected Tribal Government
9 in the contiguous States.

10 (2) RETRANSMISSION.—At the request of an af-
11 fected Tribal Government in the contiguous States,
12 the lead agency shall retransmit all materials re-
13 quired to be transmitted under subsection (a)(1), to
14 such Tribal Government in the contiguous States via
15 a form of written communication that is suitable to
16 the recipient.

17 (c) RESPONSE TO CONSULTATION REQUEST.—If an
18 affected Tribal Government in the contiguous States—

19 (1) accepts the lead agency's request for con-
20 sultation under subsection (a)(1), then the consulta-
21 tion process shall commence pursuant to the provi-
22 sions of this subtitle; or

23 (2) declines such request, then consultation is
24 not required with such Tribal Government in the
25 contiguous States and the Tribal impact statement

1 shall be amended to reflect the declination of the af-
2 fected Tribal Government in the contiguous States
3 and shall be made part of the consultation record
4 pursuant to section 401.

5 (d) NON-RESPONSE TO CONSULTATION REQUEST.—
6 If, after a good faith effort, the lead agency does not re-
7 ceive a written response to the request for consultation
8 under subsection (a)(1), the lead agency may proceed with
9 the proposed regulatory action and provide the affected
10 Tribal Government in the contiguous States with a written
11 notification and explanation for its decision to proceed
12 without consultation, which shall be made part of the con-
13 sultation record pursuant to section 401.

14 **SEC. 232. CONSULTATION PROCEDURES FOR A PROPOSED**
15 **REGULATORY ACTION WITH TRIBAL IMPACTS**
16 **THAT ARE REGIONAL OR NATIONAL IN**
17 **SCOPE.**

18 (a) CONSULTATION MEETINGS.—The lead agency
19 shall hold not less than 4 separate regional or national
20 consultation meetings before proceeding with a proposed
21 regulatory action as identified in section 102(b)(3).

22 (b) REQUIREMENTS.—The lead agency shall, with re-
23 spect to a consultation meeting required by subsection
24 (a)—

1 (1) make a good faith effort to determine the
2 date, location, and time for each meeting that af-
3 fords the maximum opportunity for participation by
4 affected Tribal Governments in the contiguous
5 States; and

6 (2) conduct such meetings in geographic areas
7 that are representative of and accessible to affected
8 Tribal Governments in the contiguous States.

9 **SEC. 233. CONSULTATION OUTCOME FOR PROPOSED REGU-**
10 **LATORY ACTION WITH TRIBAL IMPACTS.**

11 (a) FINAL OUTCOME DOCUMENT.—

12 (1) PREPARATION.—Upon completion of the
13 consultation process pursuant to this subtitle relat-
14 ing to a proposed regulatory action, the lead agency
15 shall prepare a final outcome document that shall—

16 (A) state the decision to proceed or not
17 proceed with the proposed regulatory action;

18 (B) state the rationale for the decision;

19 (C) list any changes to the proposed regu-
20 latory action made at the request of an affected
21 Tribal Government in the contiguous States;
22 and

23 (D) specifically address any points where
24 the decision conflicts with the request of an af-
25 fected Tribal Government in the contiguous

1 States, along with a detailed explanation of why
2 the request was not accepted.

3 (2) TRANSMISSION.—The lead agency shall
4 transmit, via the agency’s standard method of writ-
5 ten communication, a copy of the final outcome docu-
6 ment prepared under paragraph (1) to—

7 (A) with respect to a final outcome docu-
8 ment relating to a proposed regulatory action
9 as identified in section 102(b)(1), each affected
10 Tribal Government in the contiguous States; or

11 (B) with respect to a final outcome docu-
12 ment relating to a proposed regulatory action
13 as identified in section 102(b)(3), each affected
14 Tribal Government in the contiguous States
15 that participated in a consultation meeting re-
16 lating to such proposed regulatory action;

17 (3) REQUIRED FOLLOW UP.—

18 (A) IN GENERAL.—The lead agency shall
19 follow up not later than 5 business days after
20 the transmission required under paragraph (2)
21 with each intended recipient.

22 (B) RETRANSMISSION.—At the request of
23 an affected Tribal Government in the contig-
24 uous States, the lead agency shall retransmit
25 the final outcome document prepared under

1 paragraph (1) to such Tribal Government in
2 the contiguous States in such form of written
3 communication as the recipient requests.

4 (b) SUMMARY OF CONSULTATION PROCESS.—Upon
5 finalization of a proposed regulatory action with a Tribal
6 impact, the lead agency shall publish a summary of the
7 consultation process undertaken by the lead agency under
8 this subtitle as a separately identified portion of the pre-
9 amble to the regulation. The summary shall consist of—

10 (1) a description of the extent of the lead agen-
11 cy's consultation efforts with affected Tribal Govern-
12 ments in the contiguous States;

13 (2) a summary of the nature of any concerns of
14 affected Tribal Governments in the contiguous
15 States;

16 (3) a statement of the extent to which the con-
17 cerns of affected Tribal Governments in the contig-
18 uous States have been met; and

19 (4) the lead agency's position supporting the
20 need to issue the regulation as that position relates
21 to any concerns of affected Tribal Governments in
22 the contiguous States.

1 **Subtitle D—Judicial Review**

2 **SEC. 241. JUDICIAL REVIEW.**

3 A Tribal Government in the contiguous States may
4 seek judicial review of a determination by a Federal agen-
5 cy under this Act in accordance with chapter 7 and sub-
6 chapter II of chapter 5 of title 5, United States Code
7 (commonly known as the Administrative Procedure Act),
8 if the Tribal Government in the contiguous States has ex-
9 hausted all other administrative remedies available.

10 **TITLE III—TRILATERAL** 11 **CONSULTATION IN ALASKA**

12 **SEC. 301. DEFINITIONS.**

13 For the purposes of this title:

14 (1) **TRILATERAL CONSULTATION.**—The term
15 “trilateral consultation” means the direct, timely,
16 and interactive process of receiving meaningful input
17 from Tribal Governments in Alaska and Alaska Na-
18 tive entities regarding covered activities or regu-
19 latory actions proposed by a Federal agency that
20 may have Tribal impacts in Alaska.

21 (2) **TRILATERAL CONSULTATION MEETING.**—
22 The term “trilateral consultation meeting” means a
23 meeting held under section 311 between a Federal
24 agency, Tribal Government in Alaska, or Alaska Na-
25 tive entity.

1 **Subtitle A—Standards for**
2 **Trilateral Consultation in Alaska**

3 **SEC. 311. STANDARDS FOR TRILATERAL CONSULTATION.**

4 (a) **REQUIRED TRILATERAL CONSULTATION.**—Each
5 Federal agency shall consult with affected Tribal Govern-
6 ments in Alaska and Alaska Native entities before expend-
7 ing funds on a covered activity or proposed regulatory ac-
8 tion that may have a Tribal impact in Alaska.

9 (b) **STRUCTURE OF TRILATERAL CONSULTATION**
10 **MEETINGS.**—Each trilateral consultation meeting shall—

11 (1) be structured to allow for meaningful and
12 respectful interaction among all participants, includ-
13 ing allowing adequate time for introductions and any
14 ceremonial proceedings; and

15 (2) conclude with planning for any subsequent
16 trilateral consultation meetings, if necessary.

17 (c) **TRILATERAL CONSULTATION MEETING OBJEC-**
18 **TIVES.**—The lead agency shall make a good faith effort
19 through sustained interaction and collaboration during tri-
20 lateral consultation meetings to reach a consensus result-
21 ing in the execution of a memorandum of agreement be-
22 tween the lead agency and the affected Tribal Government
23 in Alaska or Alaska Native entity regarding the covered
24 activity or proposed regulatory action.

1 (d) PAYMENT FOR DOCUMENTATION WORK.—If the
2 lead agency asks a Tribal Government in Alaska or Alaska
3 Native entity for specific information or documentation
4 reasonably necessary for meaningful trilateral consultation
5 under this title which fulfills the duties of a Federal agen-
6 cy in a role similar to that of a consultant or contractor,
7 then at the request of the Tribal Government in Alaska
8 or Alaska Native entity the lead agency shall pay for such
9 services.

10 (e) WITHDRAWAL FROM TRILATERAL CONSULTA-
11 TION.—A Tribal Government in Alaska or Alaska Native
12 entity may withdraw from the trilateral consultation proc-
13 ess under this title by notifying the lead agency of their
14 intent to withdraw. In such case, the lead agency shall
15 provide the affected Tribal Government in Alaska or Alas-
16 ka Native entity with the opportunity to submit a written
17 statement, explanation, or comment on the trilateral con-
18 sultation proceedings which shall be made part of the con-
19 sultation record pursuant to section 401.

1 **Subtitle B—Trilateral Consultation**
2 **Procedures for a Proposed Cov-**
3 **ered Activity With Tribal Im-**
4 **pacts in Alaska**

5 **SEC. 321. TRILATERAL CONSULTATION OUTREACH FOR A**
6 **PROPOSED COVERED ACTIVITY IN ALASKA.**

7 (a) TRILATERAL CONSULTATION REQUEST.—With
8 respect to a proposed covered activity that the lead agency
9 determines in the Tribal impact statement may have a
10 Tribal impact in Alaska, the lead agency shall—

11 (1) transmit, via the agency’s standard method
12 of written communication, a formal request for a tri-
13 lateral consultation meeting, a description or copy of
14 the covered activity, and a copy of the Tribal impact
15 statement, to each affected Tribal Government in
16 Alaska or Alaska Native entity identified in the
17 Tribal impact statement;

18 (2) follow up not later than 10 business days
19 after transmitting such request to ensure receipt of
20 the documents by each affected Tribal Government
21 in Alaska or Alaska Native entity; and

22 (3) if the documents were not received by an af-
23 fected Tribal Government in Alaska or Alaska Na-
24 tive entity, retransmit all materials to that affected
25 Tribal Government in Alaska or Alaska Native enti-

1 ty via a form of written communication that is suit-
2 able to the recipient.

3 (b) RESPONSE TO TRILATERAL CONSULTATION RE-
4 QUEST.—If an affected Tribal Government in Alaska or
5 Alaska Native entity—

6 (1) accepts the lead agency’s request for tri-
7 lateral consultation, then the trilateral consultation
8 process shall commence pursuant to this subtitle; or

9 (2) declines the lead agency’s request for tri-
10 lateral consultation, then trilateral consultation with
11 such Tribal Government in Alaska or Alaska Native
12 entity is not required and the Tribal impact state-
13 ment shall be amended to reflect the declination of
14 the affected Tribal Government in Alaska or Alaska
15 Native entity and shall be made part of the record
16 pursuant to section 401.

17 (c) DATE AND FORMAT FOR TRILATERAL CON-
18 SULTATION MEETINGS.—The lead agency shall negotiate
19 with each affected Tribal Government in Alaska or Alaska
20 Native entity that accepts a request for trilateral consulta-
21 tion under subsection (b)(1) to determine the date and for-
22 mat for the trilateral consultation meetings relating to the
23 proposed covered activity. The lead agency shall ensure
24 that such meetings accommodate the cultural practices of

1 Alaska Natives, including the observance of traditional
2 subsistence seasons.

3 (d) NON-RESPONSE TO TRILATERAL CONSULTATION
4 REQUEST.—If, after a good faith effort, the lead agency
5 does not receive a written response to the request for tri-
6 lateral consultation under subsection (a), the lead agency
7 may proceed with the covered activity and provide the af-
8 fected Tribal Government in Alaska or Alaska Native enti-
9 ty with a written notification and explanation for its deci-
10 sion to proceed without trilateral consultation, which shall
11 be made part of the consultation record pursuant to sec-
12 tion 401.

13 **SEC. 322. CONCLUSION OF TRILATERAL CONSULTATION**
14 **MEETINGS FOR A PROPOSED COVERED AC-**
15 **TIVITY IN ALASKA.**

16 (a) CONCLUSION WITH A MEMORANDUM OF AGREE-
17 MENT.—

18 (1) IN GENERAL.—Trilateral consultation meet-
19 ings under this subtitle regarding a proposed cov-
20 ered activity may conclude upon the execution of a
21 memorandum of agreement between the lead agency
22 and the affected Tribal Government in Alaska or
23 Alaska Native entity.

24 (2) **【_____】**.—The memorandum of agree-
25 ment—

1 (A) may address multiple covered activities
2 if the activities are similar in nature, are re-
3 gional or national in scope, or where routine
4 management activities are undertaken at Fed-
5 eral facilities or land management units;

6 (B) may establish standard processes for
7 certain categories of activities defined in the
8 memorandum of agreement; and

9 (C) shall—

10 (i) include a provision for monitoring
11 and reporting on the implementation of the
12 covered activity;

13 (ii) include provisions for reconsider-
14 ation if the activity has not been completed
15 within a specified time; and

16 (iii) include provisions to address new
17 discoveries, which may include halting the
18 activity and returning to the trilateral con-
19 sultation stage.

20 (3) AMENDMENT.—The executed memorandum
21 of agreement may only be amended with the written
22 consent of all signatories.

23 (b) CONCLUSION WITHOUT A MEMORANDUM OF
24 AGREEMENT.—If, after a good faith effort, the lead agen-
25 cy determines that further trilateral consultation meetings

1 regarding a proposed covered activity will not be produc-
2 tive, it may conclude trilateral consultation meetings with-
3 out a memorandum of agreement. The lead agency shall
4 provide the affected Tribal Government in Alaska or Alas-
5 ka Native entity with a written notification and expla-
6 nation for its decision, including identification of any legal,
7 policy, or factual barriers that prevented the lead agency
8 from reaching agreement with the affected Tribal Govern-
9 ment in Alaska or Alaska Native entity, which shall be
10 made part of the consultation record pursuant to section
11 401.

12 **SEC. 323. TRILATERAL CONSULTATION OUTCOME FOR A**
13 **PROPOSED COVERED ACTIVITY IN ALASKA.**

14 (a) PRELIMINARY TRILATERAL CONSULTATION OUT-
15 COME.—

16 (1) TRANSMISSION OF DOCUMENT.—Upon the
17 conclusion of trilateral consultation meetings, the
18 lead agency shall transmit a preliminary outcome
19 document via such agency’s standard method of
20 written communication to each affected Tribal Gov-
21 ernment in Alaska or Alaska Native entity that
22 shall—

23 (A) state the decision to proceed or not
24 proceed with the covered activity;

1 (B) state the rationale for the decision;
2 and

3 (C) specifically address any points where
4 the decision conflicts with the request of an af-
5 fected Tribal Government in Alaska or Alaska
6 Native entity, including a detailed explanation
7 of why the request was not accepted.

8 (2) REQUIRED FOLLOW UP.—

9 (A) FOLLOW UP.—The lead agency shall,
10 not later than 10 business days after the date
11 on which a preliminary outcome document is
12 transmitted under paragraph (1), follow up
13 with each affected Tribal Government in Alaska
14 or Alaska Native entity that has not acknowl-
15 edged receipt to confirm receipt of such docu-
16 ment.

17 (B) RETRANSMISSION.—The lead agency
18 shall retransmit the preliminary outcome docu-
19 ment transmitted under paragraph (1) to any
20 affected Tribal Government in Alaska or Alaska
21 Native entity in such form of written commu-
22 nication as the recipient requests.

23 (b) TRILATERAL RESPONSE PERIOD.—The lead
24 agency shall provide a period of not less than 45 days after
25 issuance of the preliminary outcome document under sub-

1 section (a)(1) for a response by an affected Tribal Govern-
2 ment in Alaska or Alaska Native entity.

3 (c) FINAL OUTCOME DOCUMENT.—

4 (1) TRANSMISSION OF DOCUMENT.—After expi-
5 ration of period described in subsection (b), the lead
6 agency shall transmit a final outcome document via
7 such agency’s standard method of written commu-
8 nication to each affected Tribal Government in Alas-
9 ka or Alaska Native entity that shall—

10 (A) state the decision to proceed or not
11 proceed with the activity;

12 (B) state the rationale for the decision;

13 (C) list any changes to the preliminary de-
14 cision in response to comments received from
15 an affected Tribal Government in Alaska or
16 Alaska Native entity during the Trilateral Re-
17 sponse Period; and

18 (D) specifically address any points where
19 the decision conflicts with the request of an af-
20 fected Tribal Government in Alaska or Alaska
21 Native entity, including a detailed explanation
22 of why the request was not accepted.

23 (2) REQUIRED FOLLOW UP.—

24 (A) FOLLOW UP.—The lead agency shall,
25 not later than 10 business days after the date

1 on which a final outcome document is trans-
2 mitted under paragraph (1), follow up with
3 each affected Tribal Government in Alaska or
4 Alaska Native entity that has not acknowledged
5 receipt to confirm receipt of such document.

6 (B) RETRANSMISSION.—The lead agency
7 shall retransmit the final outcome document
8 transmitted under paragraph (1) to any af-
9 fected Tribal Government in Alaska or Alaska
10 Native entity in such form of written commu-
11 nication as the recipient requests.

12 (d) SUMMARY OF TRILATERAL CONSULTATION
13 PROCESS.—Upon confirmation of receipt of the final out-
14 come document by the affected Tribal Governments in
15 Alaska or Alaska Native entities, the lead agency shall
16 publish a summary of the trilateral consultation process.
17 The summary shall consist of—

18 (1) a description of the extent of the lead agen-
19 cy’s trilateral consultation efforts with affected Trib-
20 al Governments in Alaska or Alaska Native entities;

21 (2) a summary of the nature of any concerns of
22 affected Tribal Governments in Alaska or Alaska
23 Native entities;

1 (3) a statement of the extent to which the con-
2 cerns of affected Tribal Governments in Alaska or
3 Alaska Native entities have been met; and

4 (4) the lead agency’s position supporting the
5 need to proceed with the activity.

6 **Subtitle C—Trilateral Consultation**
7 **Procedures for a Proposed Reg-**
8 **ulatory Action With Tribal Im-**
9 **pacts in Alaska**

10 **SEC. 331. PROPOSED REGULATORY ACTION WITH TRIBAL**
11 **IMPACTS IN ALASKA.**

12 (a) **TRILATERAL CONSULTATION REQUEST.**—Upon
13 publication of the Advance Notice of Proposed Rule-
14 making pursuant section 102(e)(2), the lead agency shall
15 transmit, via the agency’s standard method of written
16 communication—

17 (1) in the case of a proposed regulatory action
18 with Tribal impacts in Alaska as identified in section
19 102(b)(2), a formal request for a trilateral consulta-
20 tion meeting, a copy of the Advance Notice of Pro-
21 posed Rulemaking, and a copy of the Tribal impact
22 statement to each affected Tribal Government in
23 Alaska or Alaska Native entity identified in the
24 Tribal impact statement; or

1 (2) in the case of a proposed regulatory action
2 with Tribal impacts in Alaska as identified in section
3 102(b)(3), a formal notice that trilateral consulta-
4 tion meetings will occur on the proposed regulatory
5 action, a copy of the Advance Notice of Proposed
6 Rulemaking, and a copy of the Tribal impact state-
7 ment to each affected Tribal Government in Alaska
8 or Alaska Native entity identified in the Tribal im-
9 pact statement.

10 (b) REQUIRED FOLLOW UP.—

11 (1) IN GENERAL.—In the case of a trilateral
12 consultation request transmitted under subsection
13 (a)(1), the lead agency shall follow up not later than
14 5 business days after the date of such request to en-
15 sure receipt of the documents by each affected Trib-
16 al Government in Alaska or Alaska Native entity.

17 (2) RETRANSMISSION.—At the request of an af-
18 fected Tribal Government in Alaska or Alaska Na-
19 tive entity, the lead agency shall retransmit all mate-
20 rials required to be transmitted under subsection
21 (a)(1) to such Tribal Government in Alaska or Alas-
22 ka Native entity via a form of written communica-
23 tion that is suitable to the recipient.

1 (c) RESPONSE TO TRILATERAL CONSULTATION RE-
2 QUEST.—If an affected Tribal Government in Alaska or
3 Alaska Native entity—

4 (1) accepts the lead agency’s request for tri-
5 lateral consultation under subsection (a)(1), then the
6 trilateral consultation process shall commence pursu-
7 ant to the provisions of this subtitle; or

8 (2) declines such request, then trilateral con-
9 sultation is not required with such Tribal Govern-
10 ment in Alaska or Alaska Native entity and the
11 Tribal impact statement shall be amended to reflect
12 the declination of the affected Tribal Government in
13 Alaska or Alaska Native entity and shall be made
14 part of the consultation record pursuant to section
15 401.

16 (d) NON-RESPONSE TO TRILATERAL CONSULTATION
17 REQUEST.—If, after a good faith effort, the lead agency
18 does not receive a written response to the request for tri-
19 lateral consultation under subsection (a)(1), the lead agen-
20 cy may proceed with the proposed regulatory action and
21 provide the affected Tribal Government in Alaska or Alas-
22 ka Native entity with a written notification and expla-
23 nation for its decision to proceed without trilateral con-
24 sultation, which shall be made part of the consultation
25 record pursuant to section 401.

1 **SEC. 332. TRILATERAL CONSULTATION PROCEDURES FOR**
2 **A PROPOSED REGULATORY ACTION WITH**
3 **TRIBAL IMPACTS THAT ARE REGIONAL OR**
4 **NATIONAL IN SCOPE.**

5 (a) TRILATERAL CONSULTATION MEETINGS.—In ad-
6 dition to the regional or national consultation meetings re-
7 quired under section 232, the lead agency shall hold no
8 less than four trilateral consultation meetings for affected
9 Tribal Governments in Alaska and Alaska Native entities
10 before proceeding with a proposed regulatory action as
11 identified in section 102(b)(3).

12 (b) REQUIREMENTS.—The lead agency shall, with re-
13 spect to a trilateral consultation meeting required by sub-
14 section (a)—

15 (1) make a good faith effort to determine the
16 date, location, and time for each meeting that af-
17 fords the maximum opportunity for participation by
18 affected Tribal Governments in Alaska and Alaska
19 Native entities;

20 (2) conduct such meetings in geographic areas
21 that are representative of and accessible to affected
22 Tribal Governments in Alaska and Alaska Native
23 entities; and

24 (3) ensure that such meetings accommodate the
25 cultural practices of Alaska Natives, including the
26 observance of traditional subsistence seasons.

1 **SEC. 333. TRILATERAL CONSULTATION OUTCOME FOR A**
2 **PROPOSED REGULATORY ACTION WITH TRIB-**
3 **AL IMPACTS IN ALASKA.**

4 (a) FINAL OUTCOME DOCUMENT.—

5 (1) PREPARATION.—Upon completion of the
6 trilateral consultation process pursuant to this sub-
7 title relating to a proposed regulatory action, the
8 lead agency shall prepare a final outcome document
9 that shall—

10 (A) state the decision to proceed or not
11 proceed with the proposed regulatory action;

12 (B) state the rationale for the decision;

13 (C) list any changes to the proposed regu-
14 latory action made at the request of an affected
15 Tribal Government in Alaska or Alaska Native
16 entity; and

17 (D) specifically address any points where
18 the decision conflicts with the request of an af-
19 fected Tribal Government in Alaska or Alaska
20 Native entity along with a detailed explanation
21 of why the request was not accepted.

22 (2) TRANSMISSION.—The lead agency shall
23 transmit, via the agency's standard method of writ-
24 ten communication, a copy of the final outcome doc-
25 ument prepared under paragraph (1) to—

1 (A) with respect to a final outcome docu-
2 ment relating to a proposed regulatory action
3 described by section 102(b)(2), each affected
4 Tribal Government in Alaska or Alaska Native
5 entity; or

6 (B) with respect to a final outcome docu-
7 ment relating to a proposed regulatory action
8 described by section 102(b)(3), each affected
9 Tribal Government Alaska or Alaska Native en-
10 tity that participated in a consultation meeting
11 relating to such proposed regulatory action;

12 (3) REQUIRED FOLLOW UP.—

13 (A) IN GENERAL.—The lead agency shall
14 follow up not later than 5 business days after
15 the transmission required under paragraph (2)
16 with each intended recipient.

17 (B) RETRANSMISSION.—At the request of
18 an affected Tribal Government in Alaska or
19 Alaska Native entity, the lead agency shall re-
20 transmit the final outcome document prepared
21 under paragraph (1) to such Tribal Government
22 in Alaska or Alaska Native entity in such form
23 of written communication as the recipient re-
24 quests.

1 (b) SUMMARY OF TRILATERAL CONSULTATION
2 PROCESS.—Upon finalization of a proposed regulatory ac-
3 tion with a Tribal impact in Alaska, the lead agency shall
4 publish a summary of the trilateral consultation process
5 undertaken by the lead agency under this Act as a sepa-
6 rately identified portion of the preamble to the regulation.
7 The summary shall consist of—

8 (1) a description of the extent of the lead agen-
9 cy’s consultation efforts with affected Tribal Govern-
10 ments in Alaska and Alaska Native entities;

11 (2) a summary of the nature of any concerns of
12 affected Tribal Governments in Alaska and Alaska
13 Native entities;

14 (3) a statement of the extent to which the con-
15 cerns of affected Tribal Governments in Alaska and
16 Alaska Native entities have been met; and

17 (4) the lead agency’s position supporting the
18 need to issue the regulation as that position relates
19 to any concerns of affected Tribal Governments in
20 Alaska or Alaska Native entities.

21 **Subtitle D—Judicial Review**

22 **SEC. 341. JUDICIAL REVIEW.**

23 A Tribal Government in Alaska or Alaska Native en-
24 tity may seek judicial review of a determination by a Fed-
25 eral agency under this Act in accordance with chapter 7

1 and subchapter II of chapter 5 of title 5, United States
2 Code (commonly known as the Administrative Procedure
3 Act), if the Tribal Government in Alaska or Alaska Native
4 entity has exhausted all other administrative remedies
5 available.

6 **TITLE IV—DOCUMENTATION**
7 **AND REPORTING**

8 **SEC. 401. DOCUMENTATION AND REPORTING.**

9 (a) **OFFICIAL CONSULTATION RECORD.**—With re-
10 spect to each covered activity or proposed regulatory ac-
11 tion with a Tribal impact, the lead agency shall—

12 (1) keep an official consultation record in ac-
13 cordance with chapter 31 of title 44, United States
14 Code, that allows accurate tracking of the process so
15 that any errors or omissions can be corrected, and
16 provides an official record of the process that can be
17 referred to in any litigation that may arise;

18 (2) document all efforts to initiate consultation
19 as well as documenting the process once it has
20 begun, such as correspondence, telephone logs, and
21 emails;

22 (3) keep notes so that the consultation record
23 documents the content of consultation meetings, site
24 visits, and phone calls in addition to information
25 about dates and who participated;

1 (4) include all final documentation in the offi-
2 cial consultation record; and

3 (5) ensure that all information designated as
4 sensitive by a Tribal Government pursuant to sec-
5 tion 202 is kept confidential.

6 (b) REPORT TO CONGRESS.—Each Federal agency
7 shall submit a biennial report on its consultation activities
8 under this Act to Congress, including each final outcome
9 document produced under this Act by such agency.

10 (c) INTERNAL REPORTING.—Each Federal agency
11 shall submit an annual report on its consultation activities
12 under this Act to the Office of Management and Budget,
13 including each final outcome document produced under
14 this Act by such agency.

15 **SEC. 402. SENSITIVE INFORMATION.**

16 (a) DESIGNATION OF SENSITIVE INFORMATION.—A
17 Tribal Government may designate information it provides
18 to a Federal agency pursuant to this Act relating to the
19 location or attributes of culturally or religiously significant
20 sites or the existence or details of cultural or religious
21 practices as sensitive information.

22 (b) PROTECTION OF SENSITIVE INFORMATION.—

23 (1) HANDLING OF SENSITIVE INFORMATION.—

24 A Federal agency that receives information des-
25 ignated as sensitive under subsection (a) shall con-

1 sult with the appropriate Tribal Government(s) to
2 determine—

3 (A) who may have access to the informa-
4 tion;

5 (B) how the Federal agency may store the
6 information; and

7 (C) whether and under what circumstances
8 the Federal agency may disclose the informa-
9 tion under subsection (b)(3).

10 (2) PROHIBITION AGAINST PUBLIC DISCLO-
11 SURE.—Except as provided in subsection (b)(3), any
12 information designated as sensitive under subsection
13 (a) shall not be disclosed by a Federal agency under
14 section 552 of title 5, United States Code (com-
15 monly known as the Freedom of Information Act),
16 nor shall the information be made available to the
17 public under any other provision of law or in any
18 Federal publication. This section shall be considered
19 a statute described in section 552(b)(3)(B) of title
20 5, United States Code.

21 (3) LIMITED RELEASE OF SENSITIVE INFORMA-
22 TION.—A Federal agency may disclose information
23 designated as sensitive under subsection (a) only if
24 the appropriate Tribal Government(s) consent to the
25 disclosure in writing.

1 (c) CLOSED MEETINGS.—At the request of a partici-
2 pating Tribal Government, a consultation meeting shall be
3 closed to the public.

4 **TITLE V—IMPLEMENTATION** 5 **AND TRAINING**

6 **SEC. 501. DESIGNATED AGENCY AND BUREAU OFFICIALS.**

7 (a) DESIGNATED AGENCY OFFICIAL.—Not later than
8 180 days after the date of enactment of this Act, the head
9 of each Federal agency shall designate an official with
10 principal responsibility for the agency’s implementation of
11 this Act.

12 (b) BUREAU OR OFFICE OFFICIAL.—Each bureau or
13 office within a Federal agency that participates in the
14 agency’s implementation of this Act shall designate one
15 or more officials to work with the official designated under
16 subsection (a).

17 **SEC. 502. AGENCY CONSULTATION POLICY.**

18 Not later than 2 years after the date of enactment
19 of this Act, each official designated under section 501(a)
20 shall submit to the Office of Management and Budget—

21 (1) a description of the agency’s consultation
22 policy; and

23 (2) a list of officials designated under section
24 501(b).

1 **SEC. 503. AGENCY CONSULTATION POLICY DURING EMER-**
2 **GENCY PERIODS.**

3 Not later than 2 years after the date of enactment
4 of this Act, each Federal agency shall, after consulting
5 with Tribal Governments pursuant to this Act, establish
6 a formal policy for consultation during an emergency pe-
7 riod. This policy shall prioritize the health and safety of
8 Tribal members, as well as the protection of Tribal lands,
9 rights, resources, and sacred sites during the emergency
10 period.

11 **SEC. 504. TRAINING.**

12 Each Federal agency shall design and implement
13 training for all staff who participate in the agency's imple-
14 mentation of this Act that is aimed at improving the agen-
15 cy's capacity for interacting with Tribal Governments. The
16 training shall—

17 (1) promote consultation, communication, col-
18 laboration, and other interactions with Tribal Gov-
19 ernments;

20 (2) outline and reinforce the agency duties con-
21 cerning Tribal interests; and

22 (3) strengthen the understanding of the United
23 States government-to-government relationship with
24 Tribal Governments.

1 **TITLE VI—TRIBAL SOVEREIGNTY**

2 **SEC. 601. TRIBAL SOVEREIGNTY.**

3 (a) IN GENERAL.—Federal agencies shall recognize
4 and respect Tribal self-government and sovereignty, honor
5 Tribal treaty and other rights, and strive to meet the re-
6 sponsibilities that arise from the unique legal relationship
7 between the Federal Government and Tribal Governments.

8 (b) RESPECTING TRIBAL SELF-DETERMINATION.—
9 With respect to the formulation and implementation of
10 policies that have a Tribal impact, agencies shall—

11 (1) encourage Tribal Governments to develop
12 their own policies to achieve program objectives; and

13 (2) when possible, defer to Tribal Governments
14 to establish Federal standards.

15 **TITLE VII—SAVINGS CLAUSE**

16 **SEC. 701. SAVINGS CLAUSE.**

17 Nothing in this Act shall—

18 (1) exempt a Federal agency from additional
19 consultation required under any other law or from
20 taking any other consultative actions as required by
21 any other law or agency prerogative in addition to
22 those required by this Act; or

23 (2) preclude a Federal agency from additional
24 consultation that complies with agency regulations
25 for consultation, advances agency consultation prac-

1 tices, or supports agency efforts to build or strength-
2 en government-to-government relationships with
3 Tribal Governments.

Amend the long title so as to read: “A bill to prescribe procedures for effective consultation and coordination by Federal agencies with federally recognized Tribal Governments and with Alaska Native entities regarding Federal Government actions that impact Tribal lands and interests to ensure that meaningful Tribal input is an integral part of the Federal decision-making process.”.

