

Marijuana Regulatory Agency Tribal Consultation Policy

Background:

On October 31, 2019, the Governor of the State of Michigan issued Executive Directive 2019-17 regarding State-Tribal Relations. The purpose of the Executive Directive was to reaffirm, implement, formalize, and extend the commitments entered into on October 28, 2020, by the State of Michigan in the Government to Government Accord.

The Marijuana Regulatory Agency (MRA) recognizes that federally recognized Indian tribes are sovereign entities and that they possess inherent authority to exercise jurisdiction over their respective lands and citizens.

The MRA recognizes that federally recognized Indian tribes possess the right to self-governance and self-determination.

The MRA recognizes that the United States has a unique trust relationship with federally recognized Indian tribes as set forth in the United States Constitution, treaties, statutes, executive orders, court decisions, and the general course of dealings of the United States with the Indian nations.

The MRA recognizes that the State of Michigan has a unique government-to-government relationship with each of Michigan's federally recognized Indian tribes, and that relationship is shaped by accords, compacts, statutes, court opinions, and a multitude of intergovernmental interactions.

The MRA is committed to meaningful communication and collaboration with federally recognized Indian tribes on matters of shared concern.

Definitions:

“Consultation” means a direct two-way communication by which the MRA and a potentially affected federally recognized Indian tribe work together collaboratively to discuss an action or activity that has been identified as potentially affecting the tribe. Consultation can be requested by the MRA or by the tribe.

“Follow up” means the process of providing information to the federally recognized Indian tribe of how their input was considered by the MRA in making its final decision or taking action.

“Identification” means a process by which the MRA evaluates activities and determines whether an activity may potentially affect one of the federally recognized Indian tribes.

“Indian country” means, including but not limited to, all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through

the reservation; and all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

“Indian tribe” or “tribe” means an 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 1944, 25 U.S.C. 479a.

“Input” means the feedback provided by the potentially affected federally recognized Indian tribe(s).

“Notification” means a one-way communication from the MRA to federally recognized Indian tribes providing them with information on an activity that has been identified as potentially affecting the tribe and requesting to begin the consultation process.

“Marijuana Regulation Agency” defined by Executive Reorganization Order 2019-2 as a Type I agency within the Department of Licensing and Regulatory Affairs (LARA). MCL 333.27001(1)(a)(d). The MRA exercises its statutory powers, duties, and functions independent of LARA’s direction. MCL 16.103.

“Tribal official” means an elected, appointed, or designated official or employee of a tribe.

“Tribal Liaison” will be responsible for ensuring the MRA’s implementation of and compliance with Executive Directive 2019-17 and the Accord; coordinate the MRA’s interactions with the government of Michigan’s federally recognized Indian Tribes; and serve as a point of contact for the MRA.

Identification:

1. MRA identifies activities that may be appropriate for consultation, using the mechanisms described below. The identification includes a determination of the complexity of the activity, the identity of the tribe(s) potentially affected by the activity, its potential implications for tribes, and any time or resource constraints relevant to the consultation process.
2. Identifying Techniques:
 - a. State-Initiated Identification: When undertaking an activity, the MRA will evaluate whether the action or decision may affect tribal interests, including but not limited to activities in Indian Country, such that consultation would be appropriate.
 - b. Tribal-Government-Initiated Identification: A tribal government may initiate the consultation process by identifying for the MRA an activity that may be appropriate for consultation. The Tribal government should contact the MRA Tribal Liaison upon identifying an activity for consultation. The MRA must evaluate whether the activity is appropriate for consultation, and it



- must afford substantial weight to the tribal government's request in performing that evaluation.
- c. Other Resources: The MRA must use other relevant resources, such as tribal partnership groups in which the tribes may be participants, to assist them in identifying activities that may be appropriate for consultation, other municipalities, state departments, and/or agencies; etc.
3. Possible Activities: Including but not limited to, actions or decisions regarding:
- a. Rules or regulations
 - b. Policies, guidance documents, or directives
 - c. Permits
 - d. Civil enforcement and compliance monitoring
 - e. Emergency preparedness and response
 - f. Federal authorizations or delegations
 - g. Efforts to carry out state obligations under a state compact or agreement

Notification:

Notification is a one-way form of communication that provides information, data, or reports to tribes by the MRA, often leading to tribal consultation if the tribe so requests. Notification must include:

- sufficient information to permit the potentially affected tribe(s) to make an informed decision regarding whether to proceed with consultation, and
- must apprise the tribes(s) of how to provide input regarding the activity.

Notifications may occur by regular or electronic mail, telephone, or other agreed upon means, depending on the nature of the activity and the number of tribes potentially affected.

The MRA will make every effort to honor tribal preferences regarding the specific method of notification, subject to applicable time and resource constraints.

Input:

1. The MRA Tribal Liaison will be responsible for the coordination and implementation of tribal consultation in accordance with this Policy and the MRA as the primary point of contact.
 - a. All communication should:
 - i. be directed at the appropriate tribal liaison/tribe/tribal official.
 - ii. should occur early in the decision-making process to allow tribal governments the opportunity to provide meaningful input and to give MRA the opportunity to consider the input.
 - iii. be preference with an agenda prepared for meeting one week in advanced.

- iv. take place with the tribe(s) after internal meetings with MRA and appropriate third-party entities (e.g. AG's office) to ensure goals and directives are clear and uniform.

2. For each consultation the MRA will develop a method which will include details on necessary parties, timeframe, and outreach plan to the potentially affected federally recognized Indian tribe, schedule of consultation opportunities, method of delivery, and details for how to record input.
3. The MRA will provide a tribal official or their appointed designee the opportunity to have MRA officials listen to their concerns, ask questions, and submit input.
4. This phase will continue until the MRA finds that there is sufficient input to make an informed decision about an action.
5. The MRA keeps a written record of input received from tribal officials during the consultation period.
6. Input will be provided by the potentially affected federally recognized Indian tribe in the format of their choice, which may include but is not limited to: by telephone, in writing, by electronic communication, face to face meeting, virtual meeting, electronic mail, or other appropriate interaction.
7. Documentation will include, at a minimum, a list of participants, a summary of the issues discussed, and a thorough description of the input received from the participating Indian tribes.
 - a. Examples of documentation may include notes of the discussion taken by an MRA employee, electronic communications, a professional transcript, and written comments submitted in response to a solicitation for tribal input.
 - b. If the MRA takes notes at the consultation, it may be appropriate to make the notes available to all Indian tribes that participated in the consultation for review and comment to ensure that the views of the tribes are accurately reflected.
 - c. Documentation of the consultation process will be available to the public.

Follow up:

1. This feedback must be in the form of a written communication from a senior agency official involved in the consultation to the most senior tribal official involved in the consultation unless the tribe directs otherwise.

Appendix

- **Building and Maintaining Tribal Relationships**
 - Understanding the different histories, cultures, religions, traditions, inside and outside governmental milieu; and how those are incorporated into their different government structures.
 - Appropriate terms for addressing tribal leaders.
 - Communications are done in a way that is mindful of tribal preference.
 - Sensitivity to culture diversity and apply an understanding of cultural awareness.
 - Each tribe is unique and distinct and should be treated as such.
 - Meeting Etiquette:
 - Timing is critical. Be cognizant of the tribal calendar and major events. Plan meetings accordingly.
 - Prepare and distribute meeting information for tribes in advance of the meeting.
 - The MRA should work with tribes to prepare agendas that address both tribal and agency concerns.
 - Ask tribal leadership if they wish to have appropriate tribal staff open and close the meeting. Be respectful of the fact that meetings will often open and close with a prayer.
 - Be patient, especially if the meeting with a tribal council includes additional agenda items or follows no fixed schedule.
 - If the MRA is hosting, allow a time at the beginning of the meeting to introduce participants and their roles. Provide a brief overview of the venue to allow for participation comfort.
 - Gifts and food may be important parts of cultural exchanges. Be aware of and sensitive to local customs. Respectfully accept any offerings and provide food to the extent allowable by MRA ethics guidance.
 - Respect local cultural practices. Details and arrangements for the government-to-government meetings should be carefully managed in advance by the staff and managers to ensure that managers are informed of local protocols.
 - Be clear about what the MRA is doing and why, including which laws and regulations govern our actions. Set realistic expectations for what the MRA can, and cannot, do.
 - Be respectful, professional, and polite by (1) using titles, not first names, especially in formal meetings; (2) turning off cell phones and never using smart phones during meetings even if tribal members may be doing so; (3) never interrupting a tribal speaker; and (4) framing questions tactfully

- in a manner that does not question an elder’s knowledge but that seeks clarification or more information.
- Listen actively. When information is presented through anecdotes or stories, make sure to understand the point being made. Ask questions.
 - Request permission to take photographs.
 - Silence is okay and quiet moments for contemplation are often acceptable if not expected.
 - Identify that notes are being taken and by what method. Provide an opportunity for meeting participants to review the notes shortly afterward to make sure their views are accurately represented.
- Confidentiality
 - Native Americans may be reluctant to share sensitive information regarding resource locations and community-held values with agency officials for several reasons. First, historical relations among native people and others have led to a distrust of the Federal Government and the non-Indian public, especially related to the respect for Native American religion. Second, secrecy is often a central tenet of Native American religious beliefs. Third, many Native Americans fear that sharing information with outsiders could result in the abuse of sacred sites and the disruption of religious ceremonies.
 - MRA Tribal Liaison and staff carrying out Native American consultation should clearly represent the sort of information they seek, the purposes to which the information will—and will not—be applied, and the limits of the MRA’s ability to protect the information from public disclosure. The extent of that ability must not be misrepresented. All sensitive data should be carefully maintained and securely stored. Offices responsible for gathering sensitive information and conducting consultation should have adequate physical and procedural means to ensure secure file maintenance and management.
 - Learning about Indian Tribes, Communities, and Leaders
 - MRA Tribal Liaison and their staffs should take the time to learn about the tribes with which they will be working:
 - What is their history?
 - What is their aboriginal land base?
 - When were they federally recognized?
 - Were their reservation rights (if any) established by treaty or by Executive order?
 - How are they organized?
 - Do they have off-reservation treaty or other reserved rights?
 - Are they related historically or culturally to other tribes in the area?

- Are there specific cultural customs that may have bearing on interactions and meeting protocols?
- It is a good idea to read the most widely accepted ethnographic histories of the tribe and information produced by the tribe about itself and membership, often available on their website. Consider subscribing to tribal media and accessing websites or other media to keep informed about what is important to the tribes with an interest in your area, who the tribal leaders are, and what issues are of concern to them. Be open to receiving information from officials about their tribe, its customs, and history. Also, be aware that some information may be considered sensitive and should not be widely disseminated. Meet or contact tribal representatives, such as tribal history or cultural program leaders, to learn what sources of information about the tribe they recommend. This context will have a bearing on meetings and consultations with tribes and may affect how successful the MRA is in its consultation efforts.
- Establish and Maintain Personal Relationships.
 - The most successful MRA-tribal working relationships will be those built and maintained over a long period of time with the same individuals representing each party.
 - The MRA Tribal Liaison is encouraged to visit tribal councils and appropriate tribal leaders on a recurring basis. Face-to-face meetings help develop relationships, irrespective of specific issues or proposed actions. MRA Tribal Liaison is encouraged to take advantage of these meetings to discuss how, when, and with whom follow-up consultation should occur. Attending economic enterprises, celebrations, dances, cultural festivals, sporting events, or feasts provides positive intercultural experiences that can build more personal, trustful relationships.
 - The MRA Tribal Liaison should assign tribal coordination duties to a limited number of employees with the goal of encouraging those employees to develop long-term professional relationships with tribes. These tribal liaisons or other staff play key roles in coordinating with tribal staff and representatives and often attend government-to-government meetings should assign tribal coordination duties to a limited number of employees with the goal of encouraging those employees to develop long-term professional relationships with tribes. These tribal liaisons or other staff play key roles in coordinating with tribal staff and representatives and often attend government-to-government meetings.
 - When MRA Tribal Liaison and/or staff assigned consultation and coordination responsibilities retire, transfer, or have changes in job duties, tribal relationships can be adversely affected. Therefore, MRA Tribal Liaison should take appropriate actions to help minimize the

turnover of personnel responsible for tribal coordination. Such actions might include assignment of accretion of duties, creation of appropriate career ladders, etc.

- Potential disruptions due to staff turnover can be reduced or managed in a number of ways. New MRA Tribal Liaison and staff should take training on tribal consultation and relations. Tribal liaisons should brief managers shortly after they come on board regarding the history of local tribal relations, existing agreements, prominent issues, and resources of concern to the tribe that the MRA knows about. Tribal liaisons should accompany managers in meetings. New managers need to visit tribes soon after arrival to become oriented regarding tribal governmental structures and tribal perspectives and to ensure that regularly scheduled government-to-government consultations will not be disrupted.
- Tribal governments hold elections for president or chairperson frequently, sometimes yearly. All MRA Tribal Liaison should quickly take the opportunity to meet with new tribal officials at the start of their tenure to discuss ongoing land use planning, land use actions, and proactive programs of interest to the two parties. Relationships between MRA personnel and permanent tribal staff can help maintain continuity. Relationships with other tribal groups, such as the National Congress of American Indians, Alaska Federation of Natives, the Institute for Tribal Environmental Professionals, and other partnership groups can also help the MRA maintain up-to-date information regarding tribal leadership and contacts.