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GENERAL MEMORANDUM 09-141

President Issues Memorandum to Executive Agencies on Tribal Consultation

The President of the United States issued a Memorandum on Consultation with Indian tribes to Federal Departments and Agencies on November 5, 2009. The President committed the Administration to "regular and meaningful collaboration and consultation with tribal officials in policy decisions that have tribal implications". The President established a 90 day time table for each agency head to implement the provisions of Executive Order 13175 on tribal consultation and a 270 day time table for the submission of a progress report which is to recur annually.

Critical to the understanding of the Obama approach to tribal consultation is the reference to and reaffirmation of Executive Order 13175 which has been in place since 2000 but has been honored more in the breach than in the observance by many Federal agencies. The Executive Order defines "policies that have tribal implications" as "regulation, legislative comments, and other policy statements or actions that have substantial direct effects on one or more tribes". Executive Order 13175 has specific requirements for the development of "regulatory policies", legislative proposals, or the handling of tribal requests for waivers to statutory and regulatory provisions. The Executive Order defines "Indian tribe" as "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 1994, 25 U.S.C. § 479a".

The Presidential Memorandum confirms that "Indian tribe", "tribal officials", and "policies that have tribal implications" have the same meanings as under Executive Order 13175.¹

Even with respect to "actions that have substantial direct effects on one or more tribes", the Executive Order (and by reference the President's November 5 Memorandum) requires Federal agencies to:

¹ However, under FY 2004 appropriations law, as amended by FY 2005 appropriations law, all Federal agencies are required to include Alaska Native regional corporations in consultation as provided in Executive Order 13175.

1. Encourage Indian tribes to develop their own policies to achieve program objectives,
2. Where possible defer to Indian tribes to establish standards, and
3. In determining whether to establish Federal standards, consult with Indian tribes as to the need for Federal standards and any alternatives that would limit the scope of Federal standards or otherwise preserve the prerogatives and authority of Indian tribes.

Within one year, the Office of Management and Budget Director, in coordination with the Assistant to the President for Domestic Policy, shall submit a report to the President on the implementation of Executive Order 13175 across the Executive Branch.

Please let us know if you have questions on the Memorandum or the Executive Order or encounter issues in assuring that Federal agencies comply with them in their relations with your tribe or tribal organization.

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Federal Register

**Monday,
November 9, 2009**

Part IV

The President

**Memorandum of November 5, 2009—
Tribal Consultation**

Presidential Documents

Title 3—

Memorandum of November 5, 2009

The President

Tribal Consultation

Memorandum for the Heads of Executive Departments And Agencies

The United States has a unique legal and political relationship with Indian tribal governments, established through and confirmed by the Constitution of the United States, treaties, statutes, executive orders, and judicial decisions. In recognition of that special relationship, pursuant to Executive Order 13175 of November 6, 2000, executive departments and agencies (agencies) are charged with engaging in regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, and are responsible for strengthening the government-to-government relationship between the United States and Indian tribes.

History has shown that failure to include the voices of tribal officials in formulating policy affecting their communities has all too often led to undesirable and, at times, devastating and tragic results. By contrast, meaningful dialogue between Federal officials and tribal officials has greatly improved Federal policy toward Indian tribes. Consultation is a critical ingredient of a sound and productive Federal-tribal relationship.

My Administration is committed to regular and meaningful consultation and collaboration with tribal officials in policy decisions that have tribal implications including, as an initial step, through complete and consistent implementation of Executive Order 13175. Accordingly, I hereby direct each agency head to submit to the Director of the Office of Management and Budget (OMB), within 90 days after the date of this memorandum, a detailed plan of actions the agency will take to implement the policies and directives of Executive Order 13175. This plan shall be developed after consultation by the agency with Indian tribes and tribal officials as defined in Executive Order 13175. I also direct each agency head to submit to the Director of the OMB, within 270 days after the date of this memorandum, and annually thereafter, a progress report on the status of each action included in its plan together with any proposed updates to its plan.

Each agency's plan and subsequent reports shall designate an appropriate official to coordinate implementation of the plan and preparation of progress reports required by this memorandum. The Assistant to the President for Domestic Policy and the Director of the OMB shall review agency plans and subsequent reports for consistency with the policies and directives of Executive Order 13175.

In addition, the Director of the OMB, in coordination with the Assistant to the President for Domestic Policy, shall submit to me, within 1 year from the date of this memorandum, a report on the implementation of Executive Order 13175 across the executive branch based on the review of agency plans and progress reports. Recommendations for improving the plans and making the tribal consultation process more effective, if any, should be included in this report.

The terms "Indian tribe," "tribal officials," and "policies that have tribal implications" as used in this memorandum are as defined in Executive Order 13175.

The Director of the OMB is hereby authorized and directed to publish this memorandum in the *Federal Register*.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person. Executive departments and agencies shall carry out the provisions of this memorandum to the extent permitted by law and consistent with their statutory and regulatory authorities and their enforcement mechanisms.



THE WHITE HOUSE,
Washington, November 5, 2009.