

U.S. Department of Commerce
Plan to
Develop a Tribal Consultation and Coordination Policy
Implementing Executive Order 13175

February 2010

Purpose

By memorandum dated November 5, 2009, President Obama reiterated to the heads of executive departments and agencies the importance of engaging in regular consultation with Indian tribal governments in the development of federal policies that have tribal implications. The President instructed each Executive Branch agency to develop – in consultation with Indian tribes and tribal leaders – a plan for implementing Executive Order (EO) 13175, “Consultation and Coordination with Indian Tribal Governments.”

Tribal governments play an important role in the Department of Commerce’s ability to successfully carry out its mission of promoting economic growth and opportunity for all Americans. The Department seeks to ensure a sound and productive relationship with tribal governments through the development and maintenance of a meaningful dialogue. This plan describes the framework through which the Department’s consultation and coordination policy will be developed.

Guiding Principles

The Department of Commerce is committed to establishing a comprehensive policy for consulting with Indian tribes on policy matters that have tribal implications. As the foundation of this policy, it recognizes:

- Indian nations exercise inherent sovereign powers and self-determination as domestic dependent nations.
- The Federal Government has a unique legal relationship with Indian tribal governments and works with them on a government-to-government basis.
- Consultation and collaboration with tribal officials is a critical ingredient to a sound and productive federal-tribal relationship.
- To succeed, the Department’s approach must be based on robust tribal participation.

Narrative

In March 1995, then-Secretary of Commerce Ronald Brown issued a set of guidelines for the Department’s interaction with American Indian and Alaska Native governments. The Department’s offices and operating units were instructed to follow that guidance in policy

development, planning and management activities, and legislative and regulatory initiatives. The guidelines recognize and acknowledge:

- the government-to-government relationship with American Indian and Alaska Native tribal governments;
- the previous commitments and precedents established by Congress and the President of the United States;
- the trust relationship between the Federal Government and American Indian and Alaska Native tribes as established by statute, treaties, court decisions, Executive Orders, regulations and federal policies;
- the Commerce Clause of the United States Constitution, which provides for the regulation of commerce between the states, and with Indian tribes and foreign nations;
- the need to obtain appropriate tribal input on policies, rules, programs and issues that affect tribes, to identify and eliminate impediments to working directly and effectively with tribal governments, and to work cooperatively with other federal departments and agencies as needed to ensure effective tribal consultation; and
- the importance of economic independence to tribal self-determination and self-sufficiency, and the need for the Department to make every effort to ensure that eligible tribes have access to Commerce programs that will help them meet their economic goals.

The Department's guidelines and EO 13175, which was issued in November 2000, have been considered in various ways by the operating units in working to administer their programs and to achieve their objectives. As an example, the Bureau of the Census has taken into consideration the significant need for tribal collaboration in planning for the decennial census of 2010. To date, 14 meetings have been held in order to consult with American Indian and Alaska Native tribal representatives and to, specifically:

- provide tribal governments focused opportunities to raise concerns that could impact the effectiveness of the decennial census;
- build partnerships to collaborate on issues of mutual interest;
- identify and promote innovative approaches for future consultation;
- involve tribes in the Bureau's decision-making process; and
- enhance the long-term relationship between tribal governments and the Bureau.

Following issuance of the President's November 2009 memorandum, the Department of Commerce established a Tribal Consultation Team (TCT) to conduct a comprehensive

assessment of other practices through which operating units have consulted with Indian tribes. The TCT comprises policy officials from across the Department.

This activity is being coordinated by the Secretary's Senior Advisor on Native American Affairs, Donald Chapman. Mr. Chapman, a member of the Mohegan Tribe of Connecticut, serves as the principal official responsible for developing and coordinating the Department's consultation policy and process, and represents the Department at weekly meetings of the White House Tribal Consultation Policy Development Team.

Plan of Actions

In developing its plan of actions, the Department of Commerce has utilized information gathered through regional and national "listening sessions" with tribal officials and other federal agencies, including the Departments of Agriculture, Education, Interior, and Treasury and the U.S. Army Corps of Engineers. These ongoing sessions are facilitated by tribal representatives and explore the full range of issues relating to how to achieve full and open tribal participation in policy matters that potentially impact on their members.

The Department will pursue the following steps to develop and implement its consultation policy.

- A communication strategy will be utilized to obtain input and share information, including:
 - the creation of a website to post this implementation plan, contact information for the Departmental coordinator, solicitations for comments and input, and, as it is developed, the Department's draft and, subsequently, final consultation plan;
 - the announcement of upcoming listening sessions in order to maximize participation and thereby enhance Commerce's awareness of tribal concerns and issues; and
 - the utilization of Federal Register notices to solicit input on the Department's tribal consultation plans and processes.
- The Department's TCT will develop a draft consultation policy based on the results of its review of current practices within Commerce and input received from tribal leaders and other stakeholders. The policy will be finalized based on comments that are received and will be posted to the Department's and White House's websites.
- The Department will continue to participate in government-wide activities and other opportunities to gain insight from tribal leaders in order to identify best practices that can be adopted and incorporated in Commerce's approach.

- A process will be adopted through which the Department's TCT will routinely evaluate the effectiveness of the consultation policy, identify opportunities for strengthening it, and make appropriate adjustments to increase its effectiveness.
- Within 270 days of President Obama's November 5, 2009, memorandum, the Department will submit to the Office of Management and Budget its first annual report on its consultation policy and progress on its implementation.