

National Aeronautics and Space Administration (NASA) Procedures for Consulting with Indian Tribal Governments under Executive Order (EO) 13175

I. Introduction

This plan describes NASA's process for consultation and certification in compliance with EO 13175, dated November 6, 2000, Consultation and Coordination with Indian Tribal Governments, 3 CFR (2000 Compilation), and Office of Management and Budget (OMB) guidance memorandum M-95-20, dated September 21, 1995. The purpose of this consultation and certification process is "to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications" (Section 5(a) of EO 13175).

NASA carries out its mission through its organizational elements: nine NASA Centers, NASA Headquarters, and the Jet Propulsion Laboratory (JPL) in Pasadena, California, operated by Caltech under a Federal research and development contract and managed by the NASA Management Office (NMO)-JPL.

NASA regulations published in Title 14 of the Code of Federal Regulations (CFR) generally do not have tribal government implications, as these regulations chiefly concern the conduct of the Agency in achieving its mission of space exploration and aeronautical research, rather than with any regulatory activity affecting the public, which could conflict with tribal prerogatives. Nevertheless, NASA shall institute the following procedures to ensure that should the situation arise where a proposed NASA regulation contains tribal implications, NASA will conduct the rulemaking process with sensitivity to tribal government concerns.

This plan and EO 13175 do not address consultation with Indian Tribal Governments or other Native American groups or individuals regarding preservation of, or potential effects on, cultural resources. NASA and its organizational elements have established processes for such consultations regarding cultural resources as required by NASA Procedural Directive 8500.1B, Environmental Management.

II. Modifications To NASA's Rulemaking Process.

A. **Initial Screening.** Pursuant to EO 12866, dated September 30, 1993, "Regulatory Planning and Review," 3 CFR (1994 Compilation), and pursuant to NASA's internal policy directives, NASA Headquarters submits semiannually to OMB for publication in the Federal Register an agenda of regulatory items under development or review (the NASA Semiannual Regulatory Agenda). These procedures have been amended to require that the NASA Indian Tribal Government Liaison review each proposed regulatory item for tribal implications, in consultation with the NASA Office of the General Counsel, when such item is first proposed for the NASA Semiannual Regulatory Agenda.

Specifically, the NASA Indian Tribal Government Liaison, in consultation with the NASA Office of the General Counsel, shall determine whether each regulatory item falls within one of the following two categories:

1. The item has tribal implications, imposes substantial direct compliance costs on tribal governments, and is not required by statute (Section 5(b) of EO 13175); or
2. The item has tribal implications and preempts tribal law (Section 6(c) of EO 13175).

If the proposed regulatory item falls within either of these two categories, NASA shall indicate to OMB that it believes the proposed regulation has tribal implications within the meaning of EO 13175. In formulating the agenda submission for that regulation, NASA shall recommend a schedule for promulgation of the rule which will allow adequate time to consult with affected tribal officials and incorporate their views into the rulemaking process.

B. Consultation Working Group. Once it is determined that the proposed regulatory item falls within either of the two categories listed above, the NASA Indian Tribal Government Liaison shall form a consultation working group, at the appropriate level of the NASA organization, to consult with tribal officials. If the proposed regulation involves only one NASA Center, and would impact the laws of only one tribe, the members of the working group shall be picked from the offices of that Center; if the proposed regulation involves more than one Center or would impact the laws of more than one tribe, then the members of the working group shall be picked from NASA Headquarters. In either case, the NASA Indian Tribal Government Liaison shall either chair the working group, or shall designate a representative to perform this function who will report to the NASA Indian Tribal Government Liaison.

Aside from the NASA Indian Tribal Government Liaison, or designee, the working group shall consist of at least one NASA official from the affected program or programs, one NASA attorney and one NASA public affairs official. The working group may, however, include a greater number of NASA officials, as determined by the NASA Indian Tribal Government Liaison.

The working group shall consult with tribal officials as the proposed NASA regulation is being developed. The tribal officials to be consulted must include elected officials of tribal governments, or their representative intertribal organizations (Section 1(d) of EO 13175), although tribal government employees may also be included in the consultations. The working group shall be thoroughly familiar with the “Fundamental Principles,” and with the “Policymaking Criteria,” contained in Sections 2 and 3 of EO 13175, respectively, and incorporate these principles and criteria into its deliberations, and into its evaluation of tribal concerns.

A record shall be kept of the outcome of consultations with tribal officials. If, as a result of the consultation process, resolution is not reached with affected tribal officials, then the NASA Indian Tribal Government Liaison shall elevate the matter to the level of the Administrator of NASA, or his designee, for determination as to whether the Agency shall continue with the proposed rulemaking.

C. Submission of Proposed Rule to OMB and Notice and Comment Period. If resolution concerning the proposed regulation has been reached, or if it is determined to proceed despite lack of resolution, NASA shall forward to OMB, along with the proposed rule, a description of the

extent of NASA's consultation with tribal officials up to that point, a summary of the nature of their concerns and NASA's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met.

This summary will constitute the preliminary tribal summary impact statement, to be published with the Notice of Proposed Rulemaking, as recommended by Section 8 of the OMB guidance of October 28, 1999. It will not constitute, however, the final tribal summary impact statement required by Sections 5(b)(2)(B) and 5(c)(2) of EO 13175, as NASA shall continue to attempt to work out any remaining disagreements with tribal officials, and integrate their concerns with other comments received from members of the public as part of the notice and comment rulemaking process. Any substantive comments concerning tribal implications, from whichever source, will be addressed by NASA in its response to comments on the proposed rule.

If, at the end of the consultation process, resolution is still not reached with tribal officials, then the NASA Indian Tribal Government Liaison shall again elevate the matter to the level of the Administrator of NASA, or his designee, for determination as to whether the Agency shall submit the final regulation to OMB for clearance.

D. Submission of Final Rule to OMB. In submitting the final rule to OMB, NASA shall include the following documents, as required by Sections 5(b), 5(c), and 7(a) of EO 13175:

1. A separately identified preamble to the proposed regulation, as it is to be issued in the Federal Register, providing to the Director of OMB a tribal summary impact statement, consisting of a description of the extent of NASA's prior consultation with tribal officials, a summary of the nature of their concerns and NASA's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met;
2. The written communications submitted to NASA by tribal officials; and
3. A certification by the NASA Indian Tribal Government Liaison that to the best of his or her knowledge and belief, NASA has complied, in a meaningful and timely manner, with the requirements of EO 13175 concerning consultation with tribal officials regarding the regulation being submitted to OMB for final review prior to promulgation.

III. Conclusion.

NASA has devised this plan for consultation with tribal officials with the intention of inserting tribal concerns into the standard NASA rulemaking process at key points, while keeping OMB informed of NASA's progress in meeting tribal concerns. NASA believes that this plan will meet the letter and the spirit of EO 13175, and OMB's guidance memoranda.

Please direct all comments to: Ms. Kathleen E. Callister, Tribal Liaison Officer, NASA Headquarters, Washington, DC 20546. Telephone: (202) 358-1953. Email: Kathleen.e.callister@nasa.gov.