



# NATIONAL CONGRESS OF AMERICAN INDIANS

May 8, 2007

REAL ID Program Office  
Attn: NAC 1-12037  
Department of Homeland Security  
Washington, DC 20528  
Fax: 866-466-5370.

Subject: Comments to Notice of Proposed Rulemaking: Minimum Standards for Driver's licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes (REAL ID): Federal Register on March 9, 2007, at Volume 72, Number 46: DHS docket number DHS-2006-0030

To Whom It May Concern:

The National Congress of American Indians (NCAI), the largest and oldest national organization representing American Indians and Alaska Natives, respectfully submits comments to the Notice of Proposed Rulemaking, published in the Federal Register on March 9, 2007, at Volume 72, Number 46, titled "Minimum Standards for Driver's Licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes" (REAL ID Standards).

Unfortunately, these regulations substantially impact tribal governments and Native American tribal citizens, yet tribal governments were not consulted in the development of these proposed regulations (in compliance with the federal government's responsibility to consult with tribes as outlined in Executive Order No. 13175<sup>1</sup>).

The citizens of NCAI member tribes and other Indian nations have been subjected to difficulties regarding identification requirements for various purposes. The creation of the artificial boundaries of Mexico and Canada has complicated matters for tribes whose homelands encompass these contemporary transnational areas. Tribal governments and the NCAI have monitored and responded to identification and border crossing issues in the past. The NCAI passed a resolution in 2006 requesting the Secretary of the Department of Homeland Security (DHS) to consult and collaborate with tribal leaders on the research and development of an "Indigenous Identification Card" for international border crossing (#MIC-06-17C). Another NCAI resolution requests the DHS Secretary to consult and collaborate with tribal leaders on the proposed Western Hemisphere Travel Initiative (#MIC-06-16C).

This Notice of Proposed Rulemaking should have recognized tribal identification documents as proof of identification and as proof of U.S. citizenship. Furthermore, tribal identification should be accepted as identification under the REAL ID standards. It is a violation of basic tenets of tribal sovereignty to require tribal members to obtain state government identification and disregard tribal identification standards, when their Constitutional relationship is directly with the federal government. We find it highly ironic that this regulation fails to consider the possibility that Native Americans, the only individuals actually indigenous to the United States, could use their own tribal documentation to prove their nativity to this country.

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**NATIVE AMERICANS DISPARATELY IMPACTED: NATIVE AMERICANS ACCESS “FEDERAL FACILITIES” EVERY DAY**

One of the official purposes stated for use of REAL ID cards is “accessing federal facilities.” Arguably no other group of civilians in the United States requires access to federal facilities on a daily basis with greater regularity than Native Americans.

Most Americans receive their basic daily services from either the private sector or their state and local governments. Because of the federal treaty agreements and trust obligations however, tribal Governments and their citizens receive many of those basic services such as health care, K-12 education, land registry, probate, directly from the federal government, including the Bureau of Indian Affairs (BIA) of the Department of Interior. American Indians and Alaska Native peoples therefore may have a need to enter a federal facility every single day to conduct government to government business, for medical check-ups at the Indian Health Services facility, or to visit their child’s teacher at the BIA elementary school.

Boarding federally-regulated commercial aircraft is another official purpose. American Indians and Alaska Natives have a need to fly Washington D.C. for business purposes and compliance could hamper the federal tribal relationship through restricted travel. Regarding the official purpose for entering commercial reactor sites tribal lands are adjacent or near to some of the 109 commercial reactors throughout the country. Limited access for tribal officials could impact public safety issues including emergency management planning activities.

The proposed rule indicates that if a federal facility currently accepts other forms of identification, such as a tribal ID, they do not need to change their policies. However, it is clear that DHS’ goal is to institutionalize the REAL ID process for the long term and eventually expand it. Therefore, it is imperative that tribal ID issues be incorporated into the regulation at the outset.

**STATE ID FOR AIR TRAVEL: VIOLATION OF GOVERNMENT-TO-GOVERNMENT RELATIONSHIP**

Tribal governments have a unique and direct government-to-government relationship with the U.S. federal government. The government-to-government relationship encompasses at a minimum on-going, in-person official meetings, discussions, negotiations and consultations.

More often than not these communications must take place in Washington, D.C., the seat of the federal government, and tribal governmental leaders must fly from their homelands throughout the United States to the federal capitol. It is a violation of the direct tribal-federal relationship to require that an elected tribal government official must go to a State government official in order to obtain “valid” proof of his or her identification in order to travel and conduct official tribal-federal governmental business. The U.S. would never

require the Prime Minister of Britain seek proof of identification from Massachusetts in order to meet with federal officials in Washington, DC.

### **TRIBES ARE SOVEREIGN GOVERNMENTS AND PRODUCE THEIR OWN IDENTIFICATION: INFRACTION OF TRIBAL SOVEREIGNTY TO REQUIRE STATE IDENTIFICATION**

Tribal governments pre-date the existence of the U.S. government. There are over 560 independent tribal nations with their own laws, governmental structures, and citizenship policies. The federal government has both treaty and trust responsibilities towards tribal nations. This relationship is a government-to-government relationship exclusively between tribal governments and the federal government, not state governments. The trust relationship has been described as follows:

The United States has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions. Since the formation of the Union, the United States has recognized Indian tribes as domestic dependent nations under its protection. The Federal Government has enacted numerous statutes and promulgated numerous regulations that establish and define a trust relationship with Indian tribes. Executive Order No. 13175.

Additionally, in 1794, several tribes entered into the Jay Treaty of Amity, Commerce and Navigation ("Jay Treaty") with the federal government. The Jay Treaty enables individual Indians to pass freely across the U.S.-Canada border based solely on their tribal citizenship. The U.S. courts, Congress, and the Executive Branch have recognized the border crossing rights defined by the Jay Treaty for over 200 years and tribal members have long exercised their rights under the treaty.

As independent sovereign nations, tribal governments issue their own forms of identification. Tribal members have tribal identification cards, tribal or Bureau of Indian Affairs (BIA) Certificates of Degree of Indian Blood, or certification of enrollment from the tribal enrollment office. It is often equally difficult to obtain tribal Identification cards. At a minimum, tribes should have the option of complying with REAL ID standards in an effort similar to the way states have the option to comply, as opposed to mandating tribes to comply with state standards.

These pieces of identification should be accepted by state governments and the federal government as both proof of identification and proof of citizenship. More importantly tribal identification should suffice as "REAL ID" identification for *all* federal and state purposes.

The federal government has a unique obligation to members of federally-recognized tribal governments that should not be forced onto or delegated to a State identification process. (Even DHS's currently accepts Native American tribal documents for identity and employment eligibility purposes on the I-9 Form). These obligations are Constitutional in nature and are separate and distinct from general citizenry obligations.

If DHS is unwilling to accept tribal documents based on its federal responsibility and relationship with tribal governments, and out of respect for the sovereignty of tribal nations, then these regulations are not feasible for the Native American tribal citizens on a practical standpoint.

#### **NO TRIBAL CONSULTATION CONDUCTED: VIOLATION OF EXEC. ORDER NO. 13175**

DHS outlines that, in compliance with Section 205(a) of the Act, they consulted with the Secretary of Transportation and the States. DHS has conducted briefings on the Minimum Standards for Drivers Licenses and Identification Cards Notice of Proposed Rulemaking ("NPRM") to state legislatures and administrations, and has conducted public town hall forums. However, no comparative outreach has been made to discuss the proposed standards with tribal government officials and tribal community members. At a minimum, DHS should embark upon meaningful, deliberate, and a comprehensive approach of consultation with tribes to discuss the NPRM. The tribal implications regarding proposed requirements for federal identification cards must be given due consideration in addressing security challenges.

#### Compliance with Executive Order 13175--Consultation and Coordination With Indian Tribal Governments

“When undertaking to formulate and implement policies that have tribal implications, agencies shall:

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 tribal officials 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.” Executive Order No. 13175 [Emphasis added].

In addition, Executive Order ("EO") No. 13175 requires federal agencies to consult with tribes to “ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.”<sup>iii</sup> Waiting until *after* a proposed rule has been published before allowing tribal governments to comment on the development of regulations does not achieve the goals of EO No. 13175. Delayed consultation forces tribes into a reactive position instead of a proactive position wherein they assist in the development of regulations and policies with tribal implications. Instead, DHS and the REAL ID standards team has only treated tribes the same as the general public, and have only afforded tribes an opportunity to comment after many of the internal policy decisions have already been made. Such a process fails to meet the intent of tribal consultation under the Executive Order and does not allow tribes to provide input in a “meaningful” manner.

The only mention of tribes or conversations about tribes in the Notice of Proposed Rulemaking is limited to a conversation between DHS and the Bureau of Indian Affairs (BIA). As a fellow U.S. federal agency, speaking with the BIA can not be interpreted as consulting directly with the tribal governments. Comparatively, while the DHS team working on the Western Hemisphere Travel Initiative (“WHTI”) has not conducted consultations with tribal officials, they have made a concerted effort to approach Indian Country. To the best of our knowledge there has been no DHS consultation or outreach by the Real ID team and meaningful consultation should take place without delay.

### **OBSTACLES TO OBTAINING STATE IDENTIFICATION: HISTORICAL LEGAL AND CULTURAL IMPEDIMENTS**

More than eighty years ago, with the passage of the *Indian Citizenship Act of 1924*,<sup>iii</sup> Native Americans were granted federal U.S. citizenship. However, well into the 1960’s state governments refused to grant Native Americans the full benefits of their state citizenship. For example, as late as 1962, New Mexico still overtly prohibited Native Americans from voting. State governments have a long history of alienating tribal citizens.

***Legal obstacles.*** States are not the appropriate entity to handle identification for Native Americans. In fact, States have employed several arguments against the inclusion of Native Americans to justify their continued disenfranchisement of Native citizens, including the following:

- 1) Indians were under federal guardianship, or were federal “wards,” and therefore not independent and competent;<sup>iv</sup>
- 2) Indians living on reservation lands were residents of their reservation and not of the state (even though the Supreme Court declared all reservation Indians residents of their states in 1881);<sup>v</sup>
- 3) Indians did not pay state taxes [not accurate] and, therefore, should not be able to participate in and affect revenue decisions;<sup>vi</sup> and
- 4) Indians were not “civilized,” and their continued participation in their tribal communities precluded participation in state government.

In fact, Idaho,<sup>vii</sup> Minnesota,<sup>viii</sup> North Dakota,<sup>ix</sup> and South Dakota,<sup>x</sup> had state constitutional provisions requiring Indians to relinquish their tribal allegiances and become “civilized,” before they were to be considered complete and enfranchised members of the state government’s citizenry.<sup>xi</sup>

***Cultural Obstacles.*** In addition, past efforts at “registering”(creating rolls) or issuing “identification” to tribal members by the state or federal government had been for the purpose of taking tribal land (allotment), relocating a tribe (Trail of Tears), or forcefully removing children from the home and sending them to boarding schools (boarding school era). On the contrary, tribal IDs serve the purpose of providing REAL ID – tribal membership!

Unfortunately, these experiences are not snippets from a history lesson. For most Native Americans, these were family members, grandmothers, and parents, and experiences are ingrained in the collective memory of the community. Needless to say, this historical legal acrimony has created a long standing alienation with state identification registration.

#### **LACK OF BIRTH CERTIFICATES IN INDIAN COUNTRY**

***High Rate of Home Deliveries.*** Many Native Americans are born outside of a modern hospital system. Because they are both born at home, and because there is not a strong association with the State government, many never receive a birth certificate. However, in many instances there will be documentation and birth records available through tribal genealogy records and tribal identification

***Indian Boy/Girl on Birth Certificate.*** In addition, of those Native children who were born in Indian hospitals, there were long periods of time for many states in which “Indian Boy” or “Indian Girl” was simply entered on a birth certificate, therefore rendering the birth certificate largely useless for the purposes at hand. Many others receive “delayed” birth certificates later in life, often registered with incorrect information.

One such example includes an elder in Washington State. Her name was incorrectly listed on her delayed birth record. She sought to have it rectified in order to obtain a passport, only to be told that “she did not exist.” It required lengthy court proceedings to try and rectify this. She has since passed away. She always had sufficient tribal documentation.

***American Indians and Military Service.*** American Indians and Alaska Natives throughout the history of this country have served in the military at a higher per capita rate than any other ethnic group. The reasons are many including culturally-based warrior traditions and a dedication to the treaty obligations made to the U.S. government. A significant number of tribal members were allowed to enlist in the military without birth certificates prior to and during World War I, World II and the Korean War. These veterans served with distinction and many were decorated, including those serving as Code Talkers in World War I and World War II. Upon returning home, many of these veterans who did not have birth certificates were unable to travel freely across the international borders of Mexico and Canada because they did not have birth certificates for identification purposes. The U.S. government conveniently waived birth certificate requirements when they were needed in service to the country.

#### **USE OF TRIBAL ENROLLMENT AS PROOF OF U.S. CITIZENSHIP**

It is unlikely there is a better process in the United States that documents an individual’s lineage and citizenship than the tribal enrollment process. There are over 560 federally-recognized tribes in the U.S. and each, like any nation, set their own citizenship guidelines. However, each of those guidelines is based on genealogy and some form of historical lineage. The tribal constitutions, including the membership provisions, are approved by the Department of Interior. Documentation of eligibility for membership can be obtained through birth certificates, but also through extensive genealogy charts dating back to original tribal membership rolls established by treaty or pursuant to federal

statutes. Tribal standards for tribal membership eligibility pre-date use of state drivers license and state ID cards.

With very few exceptions, federally-recognized tribes issue tribal enrollment cards or CDIBs to members and descendants of federally recognized tribes who are born in the U.S. or to persons descended from someone who was born in the United States. Thus, tribal enrollment cards or CDIBs should serve as satisfactory documentation of evidence of U.S. citizenship.

***Tribes with Non-U.S. Citizens on the Tribal Rols.*** A handful of the federally recognized tribes have members in the U.S. and in Canada or Mexico. These border tribes pre-date the formation of the U.S. government and the U.S. international borders. The new U.S. border often split these Nations, and their citizenry between two new countries.

The number of tribes with non-U.S. citizens on its rolls however, is likely less than 10 and is easily manageable. The U.S. Senate Finance Committee dealt with this very issue with regard to proof of U.S. citizenship for Medicare and Medicaid. In the Indian Health Care Improvement Act, S. 3524 of the 109<sup>th</sup> Congress, the Committee voted unanimously on the following language:

“[w]ith respect to those federally-recognized Indian tribes located within States having an international border whose membership includes individuals who are not citizens of the United States, the Secretary shall, after consulting with such tribes, issue regulations authorizing the presentation of such other forms of documentation (including tribal documentation, if appropriate) that the Secretary determines to be satisfactory documentary evidence of citizenship or nationality for purposes of satisfying the requirement of this subsection.”

Such members are connected politically, economically, socially and culturally to the other members living on the other side of the border. As a result of their unique location, they require the ability to pass freely between the two countries where members are located. The REAL ID standards proposed fail to consider these facts.

The Department of Homeland Security has already begun to acknowledge this concern and recently developed a series of unique identification and travel agreements relationships with the tribes in unique circumstances due to location on the border, border crossing treaties, and split communities.<sup>xiii</sup> Some locations have historically accepted tribal ID as proof of citizenship and members should continue to have the ability to present tribal ID for federal purposes

## NEXT STEPS

NCAI requests that the Department of Homeland Security consult with tribal governments as how to best implement the REAL ID Act with regard to the tribes and tribal citizens.

One step that may help in this process is coordination with the DHS Western Hemisphere Travel Initiative team. While official consultation has not begun in that process, a series of outreach conversations have already elicited a number of ideas that warrant further discussion with tribal leaders, such as acceptance of tribal enrollment information for proof of identification and U.S. Citizenship, use of tribal IDs that meet REAL ID security standards, and the possibility of a national tribal ID card which meets REAL ID standards jointly administered by tribes and the federal government. Like states, tribes object to these minimum standards being forced with no federal funding (Unfunded Mandate Reform Act; Executive Order 13175).

A number of tribes have already offered their facilities and hospitality for regional conversations with tribes on these issues such as the Viejas Band of Kumeyaay Indians in Southern California, the Seneca Nation in New York, the Tohono O'odham Nation in Arizona, and the Traditional Kickapoo Tribe of Texas. NCAI looks forward to working with the Department of Homeland Security on the next steps in this conversation.

The intent of Congress in enacting the REAL ID Act is to provide security for this nation. Tribal governments have the same governmental responsibilities to safeguard this nation's borders and to protect all people within their jurisdiction including tribal members. Tribal governments also are obligated to protect their rights and interests and ensure their inclusion in national strategies and policies which impact their homelands and peoples. Based on the unique federal/tribal relationship, much of which is based on treaty rights and agreements, tribal governments are entitled to deliberate and meaningful consultation regarding development and implementation of the REAL ID policies and regulations. The potential restrictions placed on tribal community members have far greater impact upon their daily life and culture than the ordinary citizen.

The U.S. Department of Homeland Security should begin to engage tribal officials in a national dialogue and local and/or regional consultation effort. Even if such a process slows the timeline for implementation, Congress and the DHS should seek an extension to ensure adequate, deliberate and meaningful consultation. Tribal governments have a vested interest in maintaining the integrity of tribal citizenship and are ready and willing to collaborate with DHS towards meeting the goals and objectives of keeping this nation and its people out of harm's way and preserving and protecting this nation's security.

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**<sup>i</sup> Executive Order 13175--Consultation and Coordination With Indian Tribal Governments  
November 6, 2000**

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, to strengthen the United States government-to-government relationships with Indian tribes, and to reduce the imposition of unfunded mandates upon Indian tribes; it is hereby ordered as follows:

**Section 1. Definitions.**

For purposes of this order:

- a. "Policies that have tribal implications" refers to regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.
- b. "Indian 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 1994, 25 U.S.C. 479a.
- c. "Agency" means any authority of the United States that is an "agency" under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).
- d. "Tribal officials" means elected or duly appointed officials of Indian tribal governments or authorized intertribal organizations.

**Sec. 2. Fundamental Principles.**

In formulating or implementing policies that have tribal implications, agencies shall be guided by the following fundamental principles:

- a. The United States has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions. Since the formation of the Union, the United States has recognized Indian tribes as domestic dependent nations under its protection. The Federal Government has enacted numerous statutes and promulgated numerous regulations that establish and define a trust relationship with Indian tribes.
- b. Our Nation, under the law of the United States, in accordance with treaties, statutes, Executive Orders, and judicial decisions, has recognized the right of Indian tribes to self-government. As domestic dependent nations, Indian tribes exercise inherent sovereign powers over their members and territory. The United States continues to work with Indian tribes on a government-to-government basis to address issues concerning Indian tribal self-government, tribal trust resources, and Indian tribal treaty and other rights.
- c. The United States recognizes the right of Indian tribes to self-government and supports tribal sovereignty and self-determination.

**Sec. 3. Policymaking Criteria.**

In addition to adhering to the fundamental principles set forth in section 2, agencies shall adhere, to the extent permitted by law, to the following criteria when formulating and implementing policies that have tribal implications:

- a. Agencies shall respect Indian tribal self-government and sovereignty, honor tribal treaty and other rights, and strive to meet the responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments.
- b. With respect to Federal statutes and regulations administered by Indian tribal governments, the Federal Government shall grant Indian tribal governments the maximum administrative discretion possible.

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- c. When undertaking to formulate and implement policies that have tribal implications, agencies shall:
    - 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 tribal officials 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.

**Sec. 4. Special Requirements for Legislative Proposals.**

Agencies shall not submit to the Congress legislation that would be inconsistent with the policymaking criteria in Section 3.

**Sec. 5. Consultation.**

- a. Each agency shall have an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications. Within 30 days after the effective date of this order, the head of each agency shall designate an official with principal responsibility for the agency's implementation of this order. Within 60 days of the effective date of this order, the designated official shall submit to the Office of Management and Budget (OMB) a description of the agency's consultation process.
- b. To the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications, that imposes substantial direct compliance costs on Indian tribal governments, and that is not required by statute, unless:
  - 1. funds necessary to pay the direct costs incurred by the Indian tribal government or the tribe in complying with the regulation are provided by the Federal Government; or
  - 2. the agency, prior to the formal promulgation of the regulation,
- c. consulted with tribal officials early in the process of developing the proposed regulation;
- d. in a separately identified portion of the preamble to the regulation as it is to be issued in the Federal Register, provides to the Director of OMB a tribal summary impact statement, which consists of a description of the extent of the agency's prior consultation with tribal officials, a summary of the nature of their concerns and the agency'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; and
- e. makes available to the Director of OMB any written communications submitted to the agency by tribal officials.
- f. To the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications and that preempts tribal law unless the agency, prior to the formal promulgation of the regulation,
  - 1. consulted with tribal officials early in the process of developing the proposed regulation;
  - 2. in a separately identified portion of the preamble to the regulation as it is to be issued in the Federal Register, provides to the Director of OMB a tribal summary impact statement, which consists of a description of the extent of the agency's prior consultation with tribal officials, a summary of the nature of their concerns and the agency'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; and
  - 3. makes available to the Director of OMB any written communications submitted to the agency by tribal officials.

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- g. On issues relating to tribal self-government, tribal trust resources, or Indian tribal treaty and other rights, each agency should explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking.

**Sec. 6. Increasing Flexibility for Indian Tribal Waivers.**

- a. Agencies shall review the processes under which Indian tribes apply for waivers of statutory and regulatory requirements and take appropriate steps to streamline those processes.
- b. Each agency shall, to the extent practicable and permitted by law, consider any application by an Indian tribe for a waiver of statutory or regulatory requirements in connection with any program administered by the agency with a general view toward increasing opportunities for utilizing flexible policy approaches at the Indian tribal level in cases in which the proposed waiver is consistent with the applicable Federal policy objectives and is otherwise appropriate.
- c. Each agency shall, to the extent practicable and permitted by law, render a decision upon a complete application for a waiver within 120 days of receipt of such application by the agency, or as otherwise provided by law or regulation. If the application for waiver is not granted, the agency shall provide the applicant with timely written notice of the decision and the reasons therefore.
- d. This section applies only to statutory or regulatory requirements that are discretionary and subject to waiver by the agency.

**Sec. 7. Accountability.**

- a. In transmitting any draft final regulation that has tribal implications to OMB pursuant to Executive Order 12866 of September 30, 1993, each agency shall include a certification from the official designated to ensure compliance with this order stating that the requirements of this order have been met in a meaningful and timely manner.
- b. In transmitting proposed legislation that has tribal implications to OMB, each agency shall include a certification from the official designated to ensure compliance with this order that all relevant requirements of this order have been met.
- c. Within 180 days after the effective date of this order the Director of OMB and the Assistant to the President for Intergovernmental Affairs shall confer with tribal officials to ensure that this order is being properly and effectively implemented.

**Sec. 8. Independent Agencies.**

Independent regulatory agencies are encouraged to comply with the provisions of this order.

**Sec. 9. General Provisions.**

- a. This order shall supplement but not supersede the requirements contained in Executive Order 12866 (Regulatory Planning and Review), Executive Order 12988 (Civil Justice Reform), OMB Circular A-19, and the Executive Memorandum of April 29, 1994, on Government-to-Government Relations with Native American Tribal Governments.
- b. This order shall complement the consultation and waiver provisions in sections 6 and 7 of Executive Order 13132 (Federalism).
- c. Executive Order 13084 (Consultation and Coordination with Indian Tribal Governments) is revoked at the time this order takes effect.
- d. This order shall be effective 60 days after the date of this order.

**Sec. 10. Judicial Review.**

This order is intended only to improve the internal management of the executive branch, and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the United States, its agencies, or any person.

William J. Clinton  
The White House,  
November 6, 2000.

<sup>ii</sup> Executive Order No. 13175

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<sup>iii</sup> *Snyder Act*, June 2, 1924.

<sup>iv</sup> In Arizona, the state Supreme Court disqualified Indians from voting because they were under “federal guardianship,” a status construed by the court to be synonymous with “persons under disability.” A decision enforced until the court reversed itself in 1948. (*Harrison v. Laveen*)

<sup>v</sup> Utah disenfranchised Indian voters by claiming that Indians residing on reservations did not qualify as residents of the state, despite the 1881 Supreme Court decision to the contrary. This statute stood until 1957 when, under threat of reversal by Supreme Court, the state legislature abolished it

<sup>vi</sup> Idaho, Maine, Mississippi, New Mexico, and Washington prohibited “Indians not taxed” from voting as late as 1968, even though they granted the franchise to whites who were not taxed. Idaho Const. Art. VI, S 3 (1890, amended 1950); N.M. Const. Art. XII, S 1; Wash. Const. Art. VI, S 1; Miss. Const. Art. 12 S 241 (1890, amended 1968).

<sup>vii</sup> Idaho Const. Art. VI S 3 (1890, repealed 1950).

<sup>viii</sup> The Minnesota Supreme Court defined its constitutional provision of “civilized” Indians as those who had taken up their “abode outside the reservations and there pursuing the customs and habits of civilization.” Minn. Const. art. VII, S 1, cl. 4 (1857, repealed 1960), *in re Liquor Election in Beltrami Country*, 138 Minn. 42, 163 N.W. 988 (1917).

<sup>ix</sup> North Dakota's constitution contained a provision that extended the vote only to “civilized persons of Indian descent who shall have severed their tribal relations.” N.D. Const. Art. V, S 121 (1889, repealed 1922).

<sup>x</sup> South Dakota prohibited Indians from voting or holding office “while maintaining tribal relations.” S.D. Codified Laws Ann. S 92 (1929, repealed 1951).

<sup>xi</sup> Suzanne E. Evans (University of California at Berkeley), *Encyclopedia of North American Indians, Voting* (Houghton Mifflin), (viewed September 28, 2004h [http://college.hmco.com/history/readerscomp/naind/html/na\\_041800\\_voting.htm](http://college.hmco.com/history/readerscomp/naind/html/na_041800_voting.htm))

<sup>xii</sup> By Example:

Since 1998 following a government to government consultation process that included the Bureau of Indian Affairs, Department of Justice, State Department, Immigrations & Naturalization Service, Border Patrol, and Tribal governments along the Southern Border from California to Texas, An agreement was reached between Kumeyaay Border Task Force (KBTF, is comprised of Federally recognized Kumeyaay Bands located in San Diego County whose aboriginal territory extends into northern Mexico approximately 75 miles from then International Border separating the United States and Mexico) to accept an offer from Department of Homeland Security to provide a pass and re-pass standard for Baja Kumeyaay/Pai Pai residing in northern Baja California, Mexico for purposes of continued cultural exchange, preservation of lifestyle, protection of language, and ceremonial.

This agreement allows for Baja Kumeyaay to enter the United State via a Laser Visa B1, B2 to visit Kumeyaay relatives residing on reservations in San Diego County. The agreement provides no provision for citizenship but allows pass and re-pass as was the traditional nature of Kumeyaay in this area since time immemorial. This program operates today and was based on an enrollment of all Baja Kumeyaay/Pai Pai that are residing in Baja California, Mexico this enrollment was key point for DHS to offer an administrative solution for KBTF to implement a program to process Baja Kumeyaay through the US Consulate (Tijuana) therefore a precedent has been made by DHS to accept a tribal enrollment as a method of Identification for identifying tribal membership.