



December 19,2025

Mark Paoletta
Acting Administrator
Executive Office of the President
Office of Management and Budget
Office of Information and Regulatory Affairs
Washington, D.C. 20503

Re: NTAA Comments on Memo from the Office of Management and Budget's Office of Information and Regulatory Affairs Entitled *Streamlining the Review of Deregulatory Actions (M-25-36)*

Dear Acting Administrator Mark Paoletta,

The National Tribal Air Association (NTAA) submits this comment letter regarding the Office of Information and Regulatory Affairs' (OIRA) October 21, 2025 Memorandum on Streamlining the Review of Deregulatory Actions (hereinafter "Memo").

The NTAA is a member-based organization with 161 Member Tribes. The organization's mission is to advance air quality management policies and programs, consistent with the needs, interests, and unique legal status of American Indian Tribes and Alaskan Natives. As such, the NTAA uses its resources to support the efforts of all federally recognized Tribes in protecting and improving the air quality within their respective jurisdictions. Although the organization always seeks to represent consensus perspectives on any given issue, it is important to note that the views expressed by the NTAA may not be agreed upon by all Tribes. Further, it is also important to understand that interactions with the organization do not substitute for Nation-to-Nation consultation, which can only be achieved through direct communications between the federal government and American Indian Tribal Governments and Alaskan Natives.

Tribes have been key regulatory partners with the U.S. Environmental Protection Agency (EPA) since the passage of the 1990 Clean Air Act and regulations promulgated thereunder, which allow Tribes to be treated in a manner similar to states (TAS). Tribes collaborate with state and local air quality management agencies and provide air quality education for the benefit of all citizens within their jurisdictions. NTAA has long worked with federal agencies to support effective air quality management and looks forward to working with federal agencies in the current administration to reduce the federal regulatory burden by devolving more responsibility for air regulations to states and Tribes.

NTAA is concerned that the Memo could be used to impede collaborations between Tribes and the EPA by reducing opportunities for Tribal consultation and other Tribal input into the EPA's proposed regulations that could help make those regulatory efforts successful. Given that concern, NTAA provides the following comments:

Consultation Is Required for Any Anticipated Regulations that May Impact Tribal Interests

Tribes are distinct entities that predate establishment of the United States. They possess authority from the era before the U.S. Constitution regarding the governance of their own internal affairs. The Federal Government has “‘charged itself with moral obligations of the highest responsibility and trust’ toward Indian tribes.” *Haaland v. Brackeen*, 599 U.S. 255, 274-277 (2023) (citing and quoting *United States v. Jicarilla Apache Nation*, 564 U.S. 162, 176 (2011)). As part of this Trust responsibility, EPA must initiate early consultation on any proposed actions that may impact Tribal interests before those actions are final. Consultation can provide agencies critical information that can allow their programs to succeed and to do so more efficiently.

In keeping with this Trust responsibility, EPA issued its Indian Policy in 1984, and has reaffirmed it ever since.¹ In the policy, EPA recognizes its federal Trust responsibility and states it will “give special consideration to Tribal interests in making Agency policy, and to ensure the close involvement of Tribal Governments in making decisions and managing environmental programs affecting reservation lands.”² Other agencies have similar policies and documents affirming their commitment to Trust principles.³ Likewise, under Executive Order 13175, cited in the Memo, all federal agencies must: “(1) encourage Indian [T]ribes to develop their own policies to achieve program objectives; (2) where possible, defer to Indian [T]ribes to establish standards; and (3) in determining whether to establish Federal standards, consult with [T]ribal 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 [T]ribes.”⁴

Consultation Is Also Required for Deregulatory Actions

The Memo suggests that deregulatory actions are different in kind from other regulations and actions and, for that reason, some requirements of the rulemaking process—like consultation with

¹ EPA Policy for the Administration of Environmental Programs on Indian Reservations, William D. Ruckelshaus (Nov. 8, 1984), <https://www.epa.gov/tribal/epa-policy-administration-environmental-programs-indian-reservations-epa-indian-policy>. See News Release, EPA Administrator Zeldin Reaffirms EPA's Indian Policy, Hosts National Tribal Caucus Meeting in DC (July 15, 2025), <https://www.epa.gov/newsreleases/epa-administrator-zeldin-reaffirms-epas-indian-policy-hosts-national-tribal-caucus>.

² EPA Policy for the Administration of Environmental Programs on Indian Reservations at 1.

³ Department of the Interior, Departmental Manual, Department of the Interior Policy on Consultation with Indian Tribes and Alaska Native Corporations & Procedures for Consultation with Indian Tribes, 512 DM 4 and 5 available at <https://www.bia.gov/service/tribal-consultations/tribal-consultation-policy>.

⁴ E.O. 13175 at § 3(c)(1)-(3); Memo at 3.

Tribes—“tend not be as relevant” in the deregulatory context.⁵ Likewise, the Memo states that “[a]gencies should consider deregulatory actions as presumptively not triggering these consultation ... requirements.”⁶

Contrary to these statements, presumptions against consultation for deregulatory action do not apply in the air regulatory context. Federal agencies, namely EPA, should presume that their deregulatory actions trigger consultation with Tribes.

Many deregulatory actions in the air context would involve eliminating existing controls on air emissions. These kinds of actions would cause important health impacts on affected populations, including Tribes and Tribal communities by increasing harmful pollution that causes well-known health impacts like increased risk of heart attacks, respiratory illnesses, and others. Given these likely impacts, NTAA anticipates that most proposed deregulatory actions related to air pollution could result in “a particular reason for specific government-to-government consultations,”⁷ and thus would necessarily trigger consultation requirements under E.O. 13175 and federal agencies’ own consultation policies.

In addition to public health impacts, economic impacts from proposed deregulatory actions would also trigger a requirement for Tribal consultation. For example, the EPA’s 2024 final rule on New Source Performance Standards and Emissions Guidelines for the oil and gas industry was projected to increase efficiency in the oil and natural gas industry and reduce millions of tons of harmful pollution from methane and volatile organic compounds, in addition to hazardous air pollutants.⁸ Any proposal to repeal those regulations would have not only likely have health impacts but also economic impacts on Tribes and Tribal communities by reducing incentives for oil and gas companies to become more efficient.

Deregulatory proposals to devolve federal powers to states and Tribes would also have important potential impacts on Tribes and therefore trigger Tribal consultation. For example, in the air context, EPA has a goal to build capacity for state, local and Tribal air quality management programs to carry out their primary authorities and responsibilities under the Clean Air Act. Those proposals must be crafted to ensure Tribes have the resources and technical support to successfully take on the role of regulator. In advancing these goals, EPA will need to work closely with Tribal Governments to fully embrace cooperative federalism, and Tribal consultation is a key part of that closer partnership.

For all these reasons the Memo’s suggestion that consultation is presumptively not triggered for deregulatory actions misses the mark. It is important for federal agencies, when considering and proposing deregulatory rulemaking, to incorporate Tribes’ views into the proposal to make sure that the ultimate result is a successful partnership for the Tribes and the federal agencies.

⁵ Memo at 3. The Memo also states that these requirements were not “designed with deregulation specifically in mind.” *Id.*

⁶ Memo at 3.

⁷ *Id.*

⁸ Final Rule, 89 Fed. Reg. 16820 (Mar. 8, 2024).

Reducing the Information Provided in Rulemaking Documents Impedes Meaningful Consultation

The Memo suggests that agencies should weigh the delays from creating a complete rulemaking record against the OMB's policy of encouraging speedy deregulation. For example, the Memo states that agencies should consider whether to present "additional policy or fact-bound arguments" to "preserve these additional arguments," when drafting proposed rules.⁹ It also suggests that it is "a policy question whether the delay entailed by undergoing notice and comment procedures [for a robust cost-benefit analysis] is worth the gain of this additional defense against litigation."¹⁰

In making these statements, the Memo seems to ignore the need for meaningful government-to-government consultation with Tribes and focus solely on the rules' defensibility in court, which is a different question. When an agency reduces the amount of information shared about potential regulatory actions, it impairs the ability of agencies and Tribes to engage in meaningful consultation by impeding their ability to determine whether the rulemaking triggers consultation because it may impact Tribal interests and by preventing Tribes from preparing for any consultation because they lack information about the full scope of the agency's regulatory action.

Consultation Is Different Than Notice-and-Comment Rulemaking

NTAA respectfully disagrees with the Memo's statement that, where Tribal consultation is required for a particular rulemaking, that consultation can take place as part of the "normal" "opportunity for stakeholder participation in E.O. 12866 review and the Administrative Procedure Act (APA) commenting process."¹¹ The federal government's Trust responsibility requires input from Tribal governments that is different from notice-and-comment rulemaking and cannot take place during OIRA's proposed shortened review periods for E.O. 12866 review.¹² Tribal consultation requires direct conversations between the leadership with decision-making authority at federal agencies and the Tribal government and can involve multiple follow-up meetings.¹³ Consultation does not just involve the passive receipt of information as occurs during the notice-and-comment process.

Moreover, consultation must also occur before the regulatory proposal is finalized and therefore to the extent that the Memo proposes that the notice-and-comment process can take place after an

⁹ Memo at 6.

¹⁰ Memo at 6-7.

¹¹ Memo at 3.

¹² The Memo provides new, shortened review periods for the E.O. 12866 review process: 28 days for deregulatory actions with factual records and 14 days for review periods without factual review records. Memo at 2.

¹³ See EPA Policy on Consultation with Indian Tribes at 4-5 (Dec. 7, 2023). A failure of a federal agency to comply with their own consultation policies violates not just general administrative decision-making principles but also the federal government's Trust responsibility. *Oglala Sioux Tribe of Indians v. Andrus*, 603 F.2d 707, 721 (8th Cir. 1979)

interim final rule is issued, that sequencing certainly does not discharge an agency's consultation responsibilities.¹⁴

Notice-and-Comment Rulemaking Provides Important Avenues for Tribal and Tribal Members' Input and Should Not Be Eliminated.

Although the notice-and-comment process cannot substitute for Tribal consultation, it does provide a useful complement to solicit ideas from Tribes and Tribal members. NTAA is concerned that federal agencies may follow the Memo's advice to, in some circumstances, invoke the APA's "good cause" exception to bypass notice-and-comment requirements when repealing rules the federal agencies deem to be unlawful. Use of the "good cause" exception combined with agencies' decisions to ignore consultation requirements could result in *no formal opportunities* for input from Tribes or Tribal communities.¹⁵

If this becomes agency practice, Tribal staff would be forced to divert time away from their core duties and instead spend time reviewing agency websites to understand what actions may be issued as final rules, which is a less efficient process than relying on existing processes like notification in the Federal Register or notices from agency's consultation coordinators of upcoming proposed actions. In addition, if agencies forego comment periods, consultation, and other opportunities for Tribal input during the rulemaking process, Tribes, like other stakeholders, would be required to provide their input through ensuing litigation, when these expensive efforts could have potentially been avoided through non-litigation processes.¹⁶

NTAA is also concerned that in making some of the statements about "good cause," the Memo relies on the premise that agencies can decide what the relevant statutory authorities say, contrary to the Supreme Court's holdings in the recent *Loper Bright* decision. For example, the Memo urges federal agencies to rescind regulations which are "in the agency's current view facially unlawful," including "where the rule is inconsistent with the 'single, best meaning' of the statute under *Loper Bright*."¹⁷ These statements turn *Loper Bright*'s holdings on their head by elevating the legal determination of the agency over other branches of government. In *Loper Bright*, the Supreme Court held:

The APA thus codifies for agency cases the unremarkable, yet elemental proposition reflected by judicial practice dating back to *Marbury*: that courts decide legal questions by applying their own judgment. It specifies that courts, not agencies, will decide "*all* relevant questions of law" arising on review of agency

¹⁴ Memo at 6.

¹⁵ The Memo cites *Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania*, 591 U.S. 657, 684 (2020) for the proposition that federal agencies should issue an interim final rule when seeking to repeal "facially unlawful" regulations where notice-and-comment takes places after the rule is final. Memo at 6.

¹⁶ The Memo also encourages agencies to issue interim final rules and take comment after that rule is issued. Memo at 6. This process also makes public comment largely irrelevant because the rule is already in place during the comment process.

¹⁷ Memo at 6.

action, [APA] § 706 (emphasis added)—even those involving ambiguous laws—and set aside any such action inconsistent with the law as they interpret it.

Loper Bright Enters. v. Raimondo, 603 U.S. 369, 391-92 (2024). If federal agencies craft their own legal interpretations, without benefiting from public and Tribal input on those decisions, agencies may be encouraging more litigation from parties seeking courts' views on the law.¹⁸

In closing, the NTAA looks forward to continuing to work with EPA and other federal agencies to protect growing Tribal economies as well as public health and air quality resources in Indian country. NTAA hopes that EPA and other agencies continue to fulfill their consultation obligations and Trust responsibilities to Tribes despite the Memo's encouragement for agencies to presume that those requirements do not apply. If you have any questions or would like additional information please contact Miranda O'Neill, NTAA Program Manager, Miranda.ONeill@nau.edu.

Respectfully,

Syndi Smallwood
Chair
National Tribal Air Association

Cc: Lee Zeldin, Administrator, U.S.EPA
Aaron Szabo, Assistant Administrator, OAR
Abigale Tardif, Principal Deputy Assistant Administrator, OAR
Elizabeth Shaw, Deputy Assistant Administrator for Management, OAR
Alexander Dominguez, Deputy Assistant Administrator for Mobile Sources, OAR
Katie Mills, Deputy Assistant Administrator for Permitting and Regional Matters
Peter Tsirigotis, Director, OCAP
Scott Mathias, Director, OSAP
Tabitha Langston, National Tribal Caucus Chair
Sharri Venno, R1 RTOC Tribal Co-Chair
Shavonne Smith, R2 RTOC Tribal Co-Chair
Dana Adkins, R3 RTOC Tribal Co-Chair
Jerry Cain, R4 RTOC Tribal Co-Chair
Brandy Toft, R5 RTOC Tribal Co-Chair

¹⁸ Indeed, by suggesting that agencies decide whether to forego notice and comment based on whether they predict their legal interpretation is likely to succeed in litigation, the Memo acknowledges additional litigation as a likely consequence of following the Memo's suggestions. Memo at 7 ("Surely, however, where the purely legal argument is the principal ground for repeal and likely to prevail in litigation, the dictates of efficient government, fidelity to the law, and the President's directives all point toward moving as expeditiously as possible on legal grounds to bypass notice and comment under the APA's 'good cause' exception.").

Sage Mountainflower, R6 RTOC Tribal Co-Chair
Alisha Bartling, R7 RTOC Tribal Co-Chair
Jason Walker, R8 RTOC Tribal Co-Chair
Roman Orona, R9 RTOC Tribal Co-Chair
Raymond Paddock, III, R10 RTOC Co-Chair
Pat Childers, Senior Tribal Program Coordinator, OAR
Miranda O'Neill, Program Manager, NTAA