



November 27, 2023

Dear Tribal Leader:

We are writing on behalf of the Indian Health Service (IHS) Director's Advisory Workgroup on Tribal Consultation (Workgroup) to initiate Tribal Consultation on one remaining issue – which definition of Indian Tribe to use in the updated IHS Tribal Consultation policy (Consultation Policy). The two definitions are the List Act Definition (25 U.S.C. § 5130) or the Indian Self-Determination and Education Assistance Act (ISDEAA) Definition (25 U.S.C. § 5304(e)).

On July 26, the IHS initiated Tribal Consultation on the draft Consultation Policy. Subsequently, on August 11, an additional Tribal Leader letter was provided with a summary document of key items that the Consultation Workgroup addressed after reviewing comments received from the first Tribal Consultation on April 27, 2021. There was consensus by the Consultation Workgroup to ensure the updated IHS Consultation Policy aligns as closely as possible with the Department of Health and Human Services (HHS) Tribal Consultation Policy (TCP) that was finalized on September 12 and Executive Order 13175, "*Consultation and Coordination with Indian Tribal Governments*."

After reviewing comments received from the first Tribal Consultation, and aligning the draft Consultation Policy with the final HHS TCP, the Consultation Workgroup reconvened to walk through the final draft. Consultation Workgroup members requested two weeks to go back and share the latest draft with their respective Tribes. At the conclusion of that two-week period, the Consultation Workgroup reconvened to determine any remaining issues and discussed how to proceed. A final consensus was not reached on one issue – the definition of Indian Tribe. As Co-Chairs of the Workgroup, we believe the best way to resolve this issue is to initiate additional Tribal Consultation. We request your input on the following question:

What definition of Indian Tribe should be included in the updated Consultation Policy: the List Act Definition (25 U.S.C. § 5130); or the ISDEAA Definition (25 U.S.C. § 5304(e))?

Option #1: List Act Definition (25 U.S.C. § 5130): "Indian tribe" means any Indian or Alaska Native Tribe, band, nation, pueblo, village or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe.

- *Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments") defines "Indian Tribe" using the List Act definition. It is also the definition used in the Presidential Memorandum on Uniform Standards for Tribal Consultation (November 30, 2022), the HHS TCP, and all other Federal Tribal Consultation Policies.*

Option #2: ISDEAA Definition (25 U.S.C. § 5304(e)): “Indian tribe” or “Indian Tribe” means any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) [43 U.S.C. 1601 et seq.], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

- *The ISDEAA definition of Indian Tribe includes Alaska Native Corporations (ANCs) and is currently utilized in the existing IHS Tribal Consultation Policy.*

TRIBAL CONSULTATION SESSIONS: Please make plans to join us for one or more of the following virtual Tribal Consultation sessions scheduled below to share your input and recommendations on the definition of Indian Tribe that should be included in the updated Consultation Policy. Session details follow:

DATES: Tuesday, January 9, 2024, from 3:00 p.m. – 4:30 p.m., ET
Thursday, January 11, 2024, from 3:00 p.m. – 4:30 p.m., ET
Wednesday, January 17, 2024, from 3:30 p.m. – 5:00 p.m., ET
Thursday, January 18, 2024, from 1:00 p.m. – 2:30 p.m., ET

ZOOM REGISTRATION:

<https://ihs-gov.zoomgov.com/meeting/register/vJlsc-yurDgqEj7aTuznYsSPNR0NDE81C2A>

WRITTEN COMMENTS and RECOMMENDATIONS: Please send your written comments and recommendations on which definition of Indian Tribe to include in the updated Consultation Policy by **Friday, February 23, 2024:**

- By e-mail to: consultation@ihs.gov – Subject line: **DEFINITION OF INDIAN TRIBE.**

After the comment period closes, the IHS will review all feedback and internally deliberate on which definition of Indian Tribe to include in the updated Consultation Policy. The updated Consultation Policy will then proceed through an internal IHS clearance process for signature and publication.

If you have questions or need additional information, please directly contact Ms. Anna Johnson, Program Analyst, IHS, by e-mail at anna.johnson2@ihs.gov or by telephone at (301) 204-7766.

Sincerely,

Tina J.

Conners -S

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