

Chapter 6
IHS TRIBAL CONSULTATION POLICY

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Since the formation of the Union, the United States (U.S.) recognizes Indian Tribes as sovereign nations. A unique government-to-government relationship exists between Indian Tribes and the Federal Government and acknowledges that the U.S. maintains certain treaty and trust responsibilities to Tribal Nations. This relationship is grounded in the U.S. Constitution, numerous treaties, statutes, Federal case law, regulations and executive orders that establish and define a trust relationship with Indian Tribes. This relationship is derived from the political and legal relationship that Indian Tribes have with the Federal Government and is not based upon race. An integral element of the government-to-government relationship is Tribal consultation.

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6-6.1 Introduction.

The Indian Health Service (IHS) and Indian Tribes share the goals of ~~eliminating the health disparities experienced by~~ health equity for American Indians and Alaska Natives (AI/AN) ~~and by~~ ensuring that their access to critical health services is maximized to achieve optimal health status. To achieve ~~these goals~~ this goal, it is essential that Indian Tribes and the IHS engage in diplomatic relations to ensure open, continuous, and meaningful consultation. True consultation is an ongoing process that leads to information exchange, respectful dialogue, mutual understanding ~~dual consent~~, and informed decision making. Additionally, consultation requires that information obtained from Tribes be given meaningful consideration, and IHS should strive for consensus with Tribes or a mutually desired outcome, to the extent practicable and permitted by law. The importance of consultation with Indian Tribes was affirmed through Presidential Memoranda in 1994, ~~and~~ 2004, 2009, 2021, and 2022, ~~and as well as~~ Executive Order (EO) in 2000. ~~The IHS shall engage in regular, meaningful, and robust consultation with Tribal officials in the development of Federal policies that have Tribal implications. The IHS will work to accomplish consistency and accountability in the consultation process. This policy implements the requirements of EO 13175, the Memorandum on Uniform Standards for Tribal Consultation, signed November 30, 2022, and serves to further strengthen IHS's consultation practices with Indian Tribes.~~

A. Purpose.

- (1) To formalize the requirement of the IHS to seek consultation and participation ~~by representatives~~ of Indian Tribes in policy development and program activities to ensure that Tribal health priorities and goals are ~~recognized~~ a meaningful part of IHS's decision making process. The IHS shall timely disclose to the affected Tribe or Tribes the outcome of the consultation and decision made as a result of the consultation. To the extent permitted by applicable law, the IHS shall seek to ensure that information designated as sensitive by a Tribal government is not publicly disclosed.
- (2) To establish a minimum set of requirements and expectations with respect to consultation and participation for the three levels of IHS management: Headquarters, Area Offices, and service units.
- (3) To identify critical events for which Tribal consultation and participation will be required for the three levels of IHS management: Headquarters, Area Offices, and service units.
- (4) To require the IHS to consult with Indian Tribes on proposed, new, and existing health policies and programs.

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- (5) To identify critical events where partnerships and the inclusion of Indian organizations would complement consultation with Indian Tribes.
 - (6) To promote and develop innovative methods of involving Indian Tribes in IHS policy development and in the decision making processes of the IHS.
 - (7) To coordinate with the [U.S. Department of Health and Human Services \(HHS\)](#) Divisions/Regional Offices, State agencies, supporters of [the Indian Health system](#), and others to assist Indian Tribes to advocate [for and advance for their Indian health](#) priorities.
 - (8) ~~To include Tribal recommendations and input into resulting policies and decisions to the maximum extent afforded by the federal law, and set out process for accountability to Indian Tribes for same.~~
 - (8) ~~To provide a single point of contact within the IHS for Indian Tribes to consult with the Agency and Area Offices. The Director of the Office of Tribal Self-Governance (OTSG) and the Director of the Office of Direct Service and Contracting Tribes (ODSCT) are the points of contact responsible for compliance with this policy and ensuring identified timeframes are met.~~ To charge and hold responsible all levels of management within the IHS for the implementation of this policy.
- B. ~~Background. The United States Government and each federally recognized Indian Tribe has a Government to Government relationship grounded in numerous historical, political, legal, moral, and ethical considerations. Treaties and laws, together with court decisions, have defined a relationship between Indian Tribes and the Federal Government that is unlike that between the Federal Government and any other group of Americans. Since the formation of the Union, the United States has recognized Indian Tribes as sovereign Nations. The Federal Government has enacted numerous regulations that implement and support this trust relationship with Indian Tribes. The United States has a unique, legally affirmed Government to Government Nation to Nation relationship with AI/AN Tribal Nations, which is recognized under the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions. The United States recognizes that this unique trust relationship includes a responsibility to protect and support Tribal Nations, and further acknowledges the right of Tribal governments to self-govern and supports Tribal sovereignty and self-determination. In recognition of this relationship, the IHS, and Indian Tribes share the goals of health equity for AI/AN by ensuring that their access to critical health services is maximized to achieve optimal health status. To achieve these goals, it is essential that Indian~~

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Tribes and the IHS engage in diplomatic relations to ensure open, continuous, meaningful and robust consultation.

True consultation is a two-way, Government to Government Nation to Nation exchange of information and respectful dialogue between official representatives of the United States and of Tribal Nations regarding Federal policies that have Tribal implications. Consultation recognizes Tribal sovereignty and the Government to Government Nation to Nation relationship between the United States and Tribal Nations and acknowledges that the United States maintains certain treaty and trust responsibilities to Tribal Nations. Consultation requires that information obtained from Tribes be given meaningful consideration, and agencies should strive for consensus with Tribes or a mutually desired outcome. The importance of consultation with Indian Tribes was affirmed through Presidential Memoranda in 1994, 2004, 2009 and 2021 and Executive Order in 2000. Additionally, Uniform Standards for Tribal Consultation were outlined in a 2022 Presidential Memorandum.

Since the formation of the Union, the U.S. has recognized Indian Tribes as sovereign nations. A unique government to government relationship exists between Indian Tribes and the Federal Government. This relationship is grounded in the U.S. Constitution, numerous treaties, statutes, Federal case law, regulations and executive orders that establish and define a trust relationship with Indian Tribes. This relationship is derived from the political and legal relationship that Indian Tribes have with the Federal Government and is not based upon race.

An integral element of this government to government relationship is Tribal consultation. The implementation of this policy is in recognition of this unique legal and political relationship, as affirmed in statutes and Presidential Orders/Memoranda, including but not limited to:

C. The requirements for consultation are contained in statutes and various Presidential Executive orders including the:

- (1) Indian Self-Determination and Education Assistance Act (ISDEAA), Public Law (P.L.) 93-638 as amended;
- (2) Indian Health Care Improvement Act, P.L. 94-437, as amended;
- (3) Memorandum to the Heads of Executive Departments and Agencies from President William J. Clinton, April 29 1994;

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- (4) [Presidential Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, May 14, 1998;](#)
- (5) [Presidential Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, November 6, 2000; and](#)
- (6) [Presidential Memorandum, Government-to-Government Relationship with Tribal Governments, September 23, 2004;](#)
- (7) [Presidential Memorandum on Tribal Consultation, November 5, 2009;](#)
- (8) [Presidential Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships, January 26, 2021;](#)
- (9) [Federally Recognized Indian Tribe List Act of 1994, Pub. L. 103-454, 25 U.S.C. §§5130-5131;](#)
- (10) [Presidential Memorandum on Uniform Standards for Tribal Consultation, November 30, 2022; and](#)
- (11) [Consolidated Appropriations Act, 2004, Public Law 108-199, Div. H. § 161, 118 Stat. 3, 452 \(2004\) as amended by Consolidated Appropriations Act, 2005, Pub.L. 108-447, Div. H., Title V. § 518, 118 Stat. 2809, 3267 \(2004\).](#)

C. Policy. ~~Before any action is taken that will significantly affect Indian Tribes it is the IHS policy that, to the extent practicable and permitted by law, consultation with Indian Tribes will occur. Such actions refer to policies that: It is the IHS policy that consultation with Indian Tribes will occur to the extent practicable and permitted by law before any action is taken that will significantly affect Indian Tribes. Such actions refer to policies that have~~
~~relationship between the Federal Government and the Indian Tribe(s) or on the distribution of power and responsibilities between the Federal Government and the Indian Tribe(s).~~

- (1) [Have Tribal implications, and](#)
- (2) [Have substantial direct effects on one or more Indian Tribes, or](#)
- (3) [On the relationship between the Federal Government and Indian Tribes, or](#)

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(2)(4) On the distribution of power and responsibilities between the Federal Government and Indian Tribes.

Consultation may also be initiated upon the request of one or more Indian Tribe(s). When such request is received, the IHS shall conduct an analysis, as soon as possible, to determine whether consultation is appropriate. If the request for consultation has Tribal implications, consistent with the definition in EO 13175, the IHS shall follow the applicable requirements for consultation. The IHS shall respond to the Indian Tribe within a reasonable time period. The IHS may still engage in Tribal consultation even if the Agency determines that a policy will not have Tribal implications, and should consider doing so, to the extent practicable and permitted by law, if the IHS determines that a policy is of interest to a Tribe or Tribes. ~~The trust relationship exists between the federal government and Indian Tribes exclusively.~~

Nothing in this policy waives the Government's deliberative process privilege. For example, in instances where the IHS is specifically requested by Members of Congress to respond to or report on proposed legislation, the development of such responses and of related policy is a part of the Executive Branch's deliberative process privilege and should remain confidential. In addition, in specified instances where Congress requires the IHS to work with Tribes on the development of recommendations that may require legislation, such reports, recommendations, or other products are developed independent of an IHS position, the development of which is governed by Office of Management and Budget (OMB) Circular A-19.

The following process objectives and guidelines will be used in the implementation of this policy:

- a. The IHS shall have an accountable ~~consultation~~ process as defined in Sections 6-6.3 of this policy to ensure meaningful and timely input by Tribal Officials in the development of policies that have Tribal implications. (See Section 9 for consultation guidelines.) If Offices require technical assistance in implementing these sections, the ODSCT and the OTSG can provide and/or coordinate assistance.
- b. To the extent practicable and permitted by law, the IHS shall not ~~promulgate propose the promulgation of~~ any regulation that has Tribal implications, ~~or~~ that imposes substantial direct-compliance costs on Indian Tribes, ~~and or~~ that is not required by statute, unless:

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- i. the funds necessary to pay the direct costs incurred by the Indian Tribe(s) in complying with the regulation are provided by the Federal Government; or
- ii. the IHS, prior to the formal promulgation, of the regulation:
 - (a) ~~consults~~consulted with ~~Indian Tribes Tribal Officials early and~~ throughout all stages of the process of developing the proposed regulation, ~~as guided by these policies;~~
 - (b) ~~provides~~provided a Tribal summary impact statement, in a separately identified portion of the preamble to the regulation as it is to be issued in the Federal Register (FR), ~~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
 - (c) ~~makes~~made available to the Director, IHS, any written communications regarding the proposed regulations submitted to the Agency by Tribal Officials.
- c. To the extent practicable and permitted by law, the IHS shall not ~~promulgate~~ propose ~~the promulgation of~~ any regulation that has Tribal implications and that preempts Tribal law unless the ~~IHS~~Agency, prior to the formal promulgation of the regulation:
 - i. ~~consults~~consulted with Tribal Officials throughout all stages of early in the process of developing the proposed regulation, ~~as guided by these policies;~~
 - ii. ~~provides~~provided, in a separately identified portion of the preamble to the regulation as it is to be issued in the FR, ~~a Tribal summary impact statement,~~ in a separately identified portion of the preamble to the regulation as it is to be issued in the FR, 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

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- iii. ~~makes~~made available to the Director, IHS, any written communications ~~regarding the proposed regulations~~ submitted to the Agency by Tribal Officials.
- d. On issues relating to Tribal self-govern~~ance~~ment, Tribal self-determination, Tribal trust resources, or Tribal treaty and other rights, the IHS shall make all practicable attempts should explore and, where appropriate to, use consensual mechanisms for developing regulations, including negotiated rulemaking.

6-6.2 Responsibilities ROLES The IHS, an agency within the Department of Health and Human Services, has the Government-to-Government responsibility to consult with federally recognized Indian Tribes on pertinent issues impacting tribal nations.

A. Alaska Native Corporations. In 2004, through two Consolidated Appropriations Acts, Congress required federal agencies to consult with Alaska Native Corporations (ANCs) on the same basis as federally recognized Indian Tribes under EO 13175 (Consolidated Appropriations Act, 2004, Public Law 108-199, 118 Stat. 452, as amended by Consolidated Appropriations Act, 2005, Pub. L. 108-447, 118 Stat. 3267). The IHS interprets the term "Alaska Native Corporations" in this requirement to mean "Native Corporations" as that term is defined under the Alaska Native Claims Settlement Act (ANCSA) of 1971. Congress created regional, village, and urban corporations to manage the lands, funds, and other assets conveyed to Alaska Natives by ANCSA. Most ANC shareholders are also members of a federally recognized Tribe in Alaska. The IHS will implement the requirement to consult with ANCs in a manner as close as possible to consultation with federally recognized Indian Tribes, while distinguishing the federal relationship to ANCs from the government-to-government relationship with federally recognized Indian Tribes. Consultation with ANCs will occur on a "government-to-corporation" basis, rather than "government-to-government" basis to reflect the distinction between sovereign governments and corporate entities. Consulting with ANCs will not diminish in any way the relationship and consultation obligations toward federally recognized Indian Tribes. Recognizing the distinction, the IHS will initiate consultation with ANCs on a government-to-corporation basis when taking action that has a substantial direct effect on ANCs.

A.B. Indian Tribes. The Government-to-Government relationship between the United States and Indian Tribes dictates that the principal focus for IHS consultation is with individual Indian Tribes, individually and/or collectively. As sovereign nations, Indian Tribes may request consultation with IHS regarding policies or actions that have tribal implications. The IHS will conduct Tribal consultations in a manner that prioritizes participation of official Tribal government leaders. Indian Tribes may appoint designees in writing to represent their tribal governments during consultation sessions with full privileges made available to the

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~~appointed designee. The IHS will initiate government-to-corporation consultation with ANCs when taking agency action that has a substantial and direct effect on ANCs. To the extent that concerns expressed by Indian Tribes and ANCs substantially differ, IHS shall give due consideration to the right of sovereignty and self-governance of federally recognized Indian Tribes.~~

~~B. Indian Organizations. It is frequently necessary that the IHS communicate with Indian organizations/committees to solicit consensual Tribal advice and recommendations. Although the special "Tribal-Federal" relationship is based on a Government-to-Government relationship, other statutes and policies exist that allow for consultation with Indian organizations. These organizations by the nature of their business serve and represent Indian Tribal issues and concerns that might be affected if these organizations were excluded from the consultation process. Although the special "Tribal-Federal" relationship is based on a Government-to-Government relationship is between the Federal Government and Indian Tribes, other statutes and policies exist that allow for consultation with Indian organizations. Even though some of the organizations/committees do~~

~~C. At times it is useful that the IHS communicate with Indian organizations to solicit Indian Tribe(s) advice and recommendations. The government does not participate in government-to-government consultations with these entities; rather these organizations represent the interest of Indian Tribes when authorized by those Tribes. These organizations by the sheer nature of their business serve and advocate Indian Tribes issues and concerns that might be negatively affected if these organizations were excluded from the process.~~

~~D. Headquarters. The IHS has the responsibility to~~

~~_____ True consultation is an ongoing process that leads to information exchange, mutual understanding dual~~

- ~~(2) Will ensure consultation occurs as early as possible when policy considerations are being presented to ensure that all Indian Tribes have the ability to provide input.~~
- ~~(3) Will communicate timely information to Indian Tribes on the outcomes, decision-making process, consideration of Tribal input and feedback.~~
- ~~(4) May establish national workgroups, advisory groups, and/or committees to provide technical expertise, framing of issues to be discussed and potential work products;~~

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G. National Workgroups, Advisory Groups, and Committees.

- (1) Provide technical expertise, framing of issues to be discussed and potential work products, outcomes, and/or recommendations that shall be the basis for formal Government-to-Government consultation.
- ~~(2) Address issues and complete work needed to develop and/or modify any policies and practices.~~
- ~~(3) Make a good faith effort to attend all meetings.~~
- (2) Will communicate with Indian Tribes on final appointments of IHS Area representatives to national workgroups, advisory groups, and committees. The majority of appointments shall be comprised of Tribal representatives, in accordance with membership requirements outlined in statute

These workgroups and/or advisory groups do not take the place of Tribal consultation but offer an enhancement by gathering individuals together with expertise on a particular policy, practice, issue and/or concern to work collaboratively and offer recommendations for consideration by Indian Tribes and Federal agencies. Procedural items may be addressed through charters, specific to each workgroup. General procedural steps are outlined in Section 6-6.4.

~~All Parties Given consultation is a diplomatic Government to Government relationship, the expectation is all parties will conduct themselves accordingly in a courteous and respectful manner.~~

6-6.3 Procedures.

~~A. TRIBAL CONSULTATION GUIDELINES. A critical event may be identified by the IHS and/or an Indian Tribe. Upon identification of a critical event significantly affecting one Indian Tribe or more, the IHS will initiate consultation regarding the event.~~

~~B.A. Consultative Relationship.~~ Trust between the IHS and Indian Tribes is an indispensable element in establishing a good consultative relationship. The degree and extent of consultation will depend on the identified critical event. ~~While this policy does not provide specific guidelines, a~~ All levels of IHS management shall ~~use the following criteria to~~ ensure that the requirements of this policy are satisfied.

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~~F.—~~

~~G. Identify the critical event. This includes complexity, implications, time constraints, and issue (funding, policy, programs).~~

~~H. Identify affected potentially affected Indian Tribes, etc.~~

~~I. Determine the level of consultation. This can be done after considering the critical event and the Indian Tribe(s) affected/potentially affected.~~

~~C.B. Consultation Mechanisms Process. The IHS shall develop instructions for the submission of comments and will report on all outcomes of the consultation.~~

- ~~(1) Tribal. Specific consultation mechanisms that will be used to consult with an Indian Tribe(s) include but are not limited to mailings, electronic mailings, meetings, virtual or hybrid teleconferences, and roundtables.~~
- ~~(2) The IHS recognizes that other types of meetings or conferences may occur, such as listening sessions, workshops, and technical assistance sessions, to provide opportunities to engage on complex or technical issues, gather input, or share information. However, these other types of meetings are not Tribal consultations and should not be used to supplant formal Tribal consultation. Consultation sessions will be held to solicit official Tribal comments and recommendations on policy and budget matters affecting the Indian Tribe(s). These sessions at roundtables, forums, and meetings will provide the opportunity for meaningful dialogue and effective participation by the Indian Tribe(s).~~
- ~~(3) An Indian Tribe may meet one-to-one with the IHS Director or their designated representative to consult on issues specific to that Indian Tribe: in accordance with the IHS Indian Health Manual, Part 6, Chapter 5 - Tribal Delegation Meetings.~~

~~D. Upon completion of a consultation session, the IHS will document and follow up on any~~

~~E. All IHS policies are posted on the IHS Web site.~~

~~C. When Consultation Occurs Consultation Parties. The ODSCT Director Office of Tribal Programs and the Office of Tribal Self-Governance OTSG Director, both situated within the Office of the Director, are identified as the responsible offices within the IHS for monitoring compliance with the IHS Tribal Consultation Policy. Consultation occurs:~~

- ~~(1) When the IHS Director/Deputy Directors, and/or their designee, and a Tribal Official and/or their his/her designee meet or exchange written correspondence to discuss any issue(s) concerning either party.~~

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- (2) When an Area Director, and/or ~~his/her~~ their designee meets or exchanges written correspondence with a Tribal Official and ~~or his/her~~ their designee to discuss any issue(s) concerning either party.
- (3) When a Federal sService uUnit CEO and/or ~~his/her~~ their designee meet or exchanges written correspondence with a Tribal Official and/or ~~his/her~~ their designee to discuss any issue(s) concerning either party.
- (4) Intertribal Consortium and Intertribal Organization: Intertribal Consortia and Intertribal Organizations may participate in consultations convened under this policy when authorized by those member Indian Tribes. The IHS will acknowledge these entities consist of Indian Tribes for consultation purposes, including consultation on a government to government basis. Participation by any Intertribal Consortium or Intertribal Organization does not abridge any member Indian Tribe's ability to also participate in consultation.

D. Consultation Planning Steps.

- (1) Identify the critical event. A critical event may be identified by the IHS and/or an Indian Tribe. This includes complexity, implications, time constraints, and issue(s) (funding, policy, programs).
- (2) Identify affected/~~potentially affected~~ Indian Tribe(s), ~~etc.~~
- (3) Determine the level of consultation. The level of consultation is dependent upon the critical event, and includes but is not limited to the means and methods of conducting consultation, the organizational level that is most appropriate, and timeline. This can be done after considering the critical event and the Indian Tribe(s) affected/or potentially affected.

F.E. Level of Consultation. Upon the determination of the level of consultation necessary, proper notice of the critical event and the level of consultation to be used shall be communicated to affected/potentially affected Indian Tribes using all appropriate methods with as much advance notice as practicable. Generally, every effort will be made to provide at least 30 days' notice prior to a scheduled consultation. If exceptional circumstances or factors beyond IHS's control warrant a shorter period of advance notice, the reason why the standard notice or written comment period could not be provided will be explained in communication to Indian Tribes(s). These communication methods include but are not limited to the following:

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- (1) Correspondence. Written or electronic communications should clearly provide affected/potentially affected Indian Tribe(s) with details of the critical event and the timeframe and the manner in which to provide comment. The IHS frequently uses a "Dear Tribal Leader Letter" (DTLL) to notify individual Indian Tribes of consultation activities. Other forms of correspondence include broadcast e-mail, an FR notice, and other outlets. At a minimum, the notice of consultation shall include:
- a. Sufficient information on the topic to be discussed, in an accessible language and format, and context for the consultation topic;
 - b. Date, time, and location (including if virtual) of the consultation;
 - ~~b.c.~~ If consulting telephonically or virtually, phone numbers and links to join or register in advance;
 - d. Explanation of any time constraints known to IHS at that time, such as statutory deadlines;
 - e. Deadlines for any written comments on the topic;
 - f. Names and contact information for IHS staff who can provide more information;
 - g. Appropriate available information related to the subject of consultation including, where consistent with applicable law, a proposed agenda, framing paper, and/or other relevant materials to assist in the consultation process.

Written comments will be accepted, and absent exceptional circumstances, the written comment period should be open for at least 30 days following the consultation. Upon the request of an Indian Tribe(s), or where it would serve Tribal interests, the IHS will consider adjusting deadlines for notice of consultations and/or accepting written comments.

- (2) Meetings. When the critical event is determined to have substantial direct impact, the IHS shall convene a meeting(s) to the extent practicable and permitted by law with the affected or potentially affected Indian Tribe(s) to discuss all pertinent issues. This meeting(s) may be in a national, regional, and/or Area forum, as appropriate. The IHS shall ensure that leadership and/or their designee(s) or representative(s) with appropriate knowledge and, to the extent practicable, decision-making authority ~~are present~~ atparticipate in the consultation.

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- (3) Other types of meetings ~~and~~/or conferences occur that may not be considered consultation sessions, but these meeting/conferences may provide an opportunity to share information, conduct workshops, and provide technical assistance to the Indian Tribe(s).
- (4) Federal Register Notice. In instances where IHS issues a FR Notice, a DTLL announcing Tribal Consultation will be issued concurrently with said FR Notice, which is the most formal method used by the IHS for communication and/or consultation. An FR notice is the most formal method used by the IHS for communication and/or consultation. This method can be used for a variety of purposes including but not limited to requests for comments by the affected Indian Tribe(s) regarding critical events.

G.F. Official Tribal Correspondence. Correspondence submitted by Indian Tribes to the IHS shall be referred to the appropriate IHS program office.

~~(1) Communications from Indian Tribe(s) come in many forms, including resolutions, legislation, or executive memoranda. The IHS will give equal consideration to all correspondence received that represents a formal declaration of an Indian Tribe's position for the purpose of consultation. Tribal Resolution. Official correspondence from an Indian Tribe may come in various forms, but a resolution is the most formal declaration of an Indian Tribe's position for the propose of Tribal consultation. Communications from Indian Tribes frequently come in the form of Tribal resolutions or legislation. A resolution or legislation may be the most formal declaration of an Indian Tribe's position for the purpose of Tribal consultation. Once the IHS receives a Tribal resolution or legislation, the Agency should respond appropriately. An appropriate response may include Tribal consultation.~~

~~(2)(1) Tribal Executive Correspondence. The IHS will give equal consideration to correspondence received from the executive branch of an Indian Tribe as is provided to a Tribal resolution and legislation.~~

~~Response. A response regarding an official Tribal Tribal resolution, legislation, and/or Tribal executive correspondence shall be provided by the IHS within 60 calendar days to the Indian Tribe(s).~~

H.G. Schedule for Consultation. The IHS must establish and adhere to a formal schedule of meetings to consult with the Indian Tribe(s) and their representatives concerning the planning, conduct, and administration of applicable activities. The IHS must involve Tribal Officials in meetings at every practicable opportunity. The IHS is encouraged to work with Indian Tribes to establish additional forums for Tribal consultation, participation, and information sharing.

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H. Policy Development through Tribal Consultation. The need to consult on the development or revision of develop a policy may be identified from within the IHS or may be identified by an Indian Tribe(s). ~~This need may result from external forces such as~~ This need to consult may be Consultation may be initiated in response to Executive, Judicial, or Legislative Branch directives. Once the need to ~~develop~~ consult on the development or revision of a policy is identified, the IHS will respond within 60 calendar days to the request from an Indian Tribe(s). The consultation process must begin in accordance with critical events and level of consultation described above upon the receipt of the IHS response. (See Section 9A, B, and C to determine the level of consultation.)

I. Documentation and Reporting. Upon completion of a consultation session, the IHS will document and follow up on ~~any unresolved issue(s) that would benefit from the ongoing involvement of the Indian Tribe(s).~~ the outcomes of the consultation in accordance with Section 6-6.6 and Section 6-6.7. This will include, but is not limited to, all Tribal comments and recommendations, whether such input was incorporated, and the rationale for not incorporating Tribal recommendations. ~~This~~ All IHS policies policy shall be posted on the IHS Web site.

J. HHS & State Facilitation

(1) HHS Divisions and Regional Offices

- a. Upon the request of an Indian Tribe(s), the IHS will advocate for and facilitate collaboration between HHS Divisions, Regional Offices, and the Indian Tribe(s) to assist with consultation.
- b. The IHS will assist the Indian Tribes and HHS Divisions in addressing any identified issue(s), such as access to HHS programs and services that could be
- c. The IHS and/or Area Office will work with the HHS Office of Intergovernmental and External Affairs (IEA) to assist Indian Tribes in advocating for improved HHS Division-Tribal relations.

(2) States

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- a. Upon the request of an Indian Tribe(s), the IHS will advocate for and facilitate collaboration between States and the Indian Tribe(s) to address the identified issue(s).
- b. The IHS and/or Area Office will work with the HHS/IEA to assist the Indian Tribe(s) in advocating for improved State-Tribal relations.

6-6.4 Establishment of Joint Tribal/Federal Workgroups and/or Task Forces.

Consultation.—When a new or revised national policy(ies) affect an Indian Tribe(s), the IHS Director and/or Area Director may establish a workgroup and/or task force to develop recommendations on various technical, legal, or policy issues. The workgroup or task force provides technical expertise, framing of issues to be discussed and potential recommendations that will then be the basis for formal Nation to Nation consultation. In such cases, see Addendum 1, which outlines the following process is generally followed for establishing such

A. Joint Tribal/Federal Workgroups and/or Task Forces.—Although the special "Tribal-Federal" relationship is based in part on the Government to Government relationship, it is frequently necessary for the IHS, with Tribal concurrence, to establish joint Tribal/Federal workgroups and/or task forces. These workgroups/taskforces will be charged to address issues and complete work needed to develop and/or modify any policies and practices. These workgroups and/or task forces do not take the place of Tribal consultation but offer an enhancement by gathering individuals together with expertise on a particular policy, practice, issue and/or concern to work collaboratively and offer recommendations for consideration by Indian Tribes and Federal agencies. The subsequent work products and/or outcomes developed by these workgroups and/or task forces will be handled in accordance with this policy

B. Membership Notices.—Membership on workgroups shall be widely solicited with the intent to reach all Indian Tribes by requesting membership nominees from all Indian Tribes and Indian organizations.

C. in accordance with Section 15 below, as applicable.

D. Meeting Notices.—The purpose, time frame, and specific tasks shall be clearly identified in the notice. All meetings will be open and widely publicized, at a minimum through the

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~~Office of Tribal Self-Governance, the Office of Tribal Programs, and the office initiating the policy.~~

~~E. Workgroup/Task Forces~~

~~F. The Indian Tribe(s) and the IHS should be equally represented in workgroups, if not, then Tribal members should be in the majority. Tribal members should be selected based on volunteer responses received as a result of the notice, and if possible, should represent a cross-section of the affected parties. The IHS and/or Tribal staff may serve in a technical advisory capacity. Tribal staff may accompany the workgroup leader and serve to advise him/her. The IHS staff may serve in a technical advisory capacity to the workgroup.~~

~~G. Participation:~~

~~(1) Attendance at Meetings. Workgroup members must make a good faith effort to attend all meetings. Other individuals may accompany members as the members believe it is~~

~~(2) Appointment of Alternates. Unless the charge states otherwise, each workgroup member may appoint an alternate by written notification. In cases where a Tribal Official primary member in the workgroup. The alternate will have the same voting rights as the primary member, as designated in the letter by that Tribal Official.~~

~~(3) Workgroup Protocols. The workgroup may establish protocols to govern the meetings. Such protocols will include but are not limited to the:~~

- ~~a. selection of workgroup co-chairs (Tribal/Federal), if applicable,~~
- ~~b. role of workgroup members,~~
- ~~c. process for decision making (consensus-based or otherwise), and~~
- ~~d. process for determining drafting and availability of all final workgroup products and documents.~~

~~(4) Workgroup Charge. Prior to the workgroup formulation, the IHS may develop an initial workgroup charge in enough detail to define the policy concept. Once established, the~~

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~~workgroup will develop recommendations for the final workgroup charge for the approval of the Director, IHS.~~

- ~~(5) Workgroup Final Products. Early consultation with the IHS Management Policy and Internal Control Staff (MPICS) is recommended to discuss options for the policy format and placement in the Indian Health Manual.~~

~~Indian Tribe(s) and Indian organization(s) for review and comment and to allow~~

- ~~b. A concurrent internal IHS review and comment period will be initiated by MPICS in accordance with Part 1, Chapter 1, "Indian Health Manual System," Indian Health Manual.~~
- ~~c. Comments from the Indian Tribe(s) will be returned to the workgroup, which will meet in a timely manner to discuss the comments and determine the next course of action.~~
- ~~d. Comments from IHS staff will be coordinated by MPICS, compiled, and provided to the Office of Tribal Programs for its review and recommended action, which may include further discussion with the workgroup.~~
- ~~e. If the proposed policy is considered to be substantially complete as written, the workgroup will forward the proposed policy to the Director, IHS, as final~~



~~workgroup shall be considered by the Director, IHS. Once the consultation process is completed and a policy decision is finalized, the final policy shall be broadly distributed to all Indian Tribes and Indian organizations.~~

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6-6.5 IHS BUDGET FORMULATION. ~~On an annual basis, the IHS shall consult with, and solicit the participation of, Indian Tribes and Tribal organizations, regarding the development of the budget and annual performance plan for the IHS. Through this process, Indian Tribes and Tribal Organizations will provide input on program priorities, policies, and budget recommendations for consideration in the formulation of the IHS budget. The IHS will consult with Tribal Leaders Indian Tribes on an annual basis regarding budget formulation and relevant policy issues. Through this process, Tribal Leaders~~ The IHS deals with multiple fiscal year budgets on a regular basis. The IHS budget formulation process is comprised of annual forums for Indian Tribes to interact with the IHS to ~~provide input on program priorities, policies, and budget recommendations for consideration in the formulation of the IHS budget.~~ In addition, statutes and policies exist that require the IHS to confer with Urban Indian Organizations (UIOs) on the IHS budget formulation. The IHS will confer with UIOS regarding the annual IHS budget formulation, pursuant to its statutory authority and the IHS Urban Confer Policy.

A. ~~Budget Formulation.~~ The IHS ~~shall consult with, and will~~ solicit the ~~active~~ participation of

-
- (1) October through December - Individual IHS Area budget formulation_ work sessions.
 - (2) February through March -National IHS budget formulation work session.
 - (3) ~~April May~~ - Tribal presentation of national priorities and recommendations ~~to at~~ the National HHS Tribal Budget Formulation and Consultation Session, ~~including and to the Intradepartmental Council on Native American Affairs.~~
 - (4) May through June - The IHS will assist in the development of a meeting among the co-chairs of the National Tribal Budget Formulation Workgroup, representatives from Tribal Organizations/UIOs Indian organizations as appropriate, and the ~~Director of the~~ Office of Management and Budget (OMB), ~~at which in April of each year.~~ Tribal presentation of national priorities and recommendations can be presented to the Office of Management and Budget OMB.

B. Area Budget Formulation Teams. In preparation for the IHS Area-wide Tribal consultation session, Area budget formulation teams will provide ongoing support to the budget

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formulation activities at the Area level. Each Area budget formulation team shall consist of Tribal Officials and IHS staff.

The IHS Headquarters [Office of Finance and Accounting](#) provides standard instructions to the Areas for the development of Area budget priorities:

- (1) The Area budget formulation team solicits Area-wide input in establishing [a fully funded budget request](#) the health and budget priorities for the Area.
- (2) The Area budget formulation team ~~identifies two of its members to attend~~ [nominates two Tribal Officials to serve as representatives at](#) the National Tribal Budget Formulation Workgroup session on behalf of the Area.

C. Headquarters Budget Formulation Work Team.

- (1) Provides staff support to the Director, IHS, for budget formulation.
- (2) Develops the IHS budget request in accordance with HHS and OMB guidelines.
- (3) Provides information on the budget request and formulation process.
- (4) Adheres ~~in all activities to~~ [all recommendations provided by the priorities established at the national work session and to the guidance provided by](#) the National Tribal Budget Formulation Workgroup.
- (4)(5) [Reviews any proposed budget decisions that deviate from the the annual President's Budget with the National Tribal Budget Formulation Workgroup after the budget has been made public. Recommendations and/or guidance with the Workgroup prior to finalize the budget request.](#)

D. National Tribal Budget Formulation Workgroup Session. The national budget formulation work session is conducted yearly to consolidate ~~budget and health priority recommendations into a comprehensive set of national health priorities and the IHS proposed budget request. A fully funded budget request that includes population, health status, technology and inflationary factors~~ [budget and policy recommendations from the Area Budget Teams into a unified set of national budget and policy recommendations.](#)

E. National Tribal Budget Formulation Workgroup. The workgroup consists of two Tribal representatives from each of the 12 IHS Areas as identified ~~at by~~ [the Area work sessions Budget Teams.](#) ~~Additional representatives from Indian organization(s) will participate in the~~

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~~workgroup at the discretion of the Director, IHS.~~ The workgroup provides input and guidance to the IHS Headquarters budget formulation team throughout the remainder of the budget formulation cycle for that fiscal year. Costs incurred by the Indian Tribe(s) ~~or Indian organization(s)~~ for the purpose of participating in the National Tribal Budget Formulation Workgroup shall be the responsibility of the IHS.

- F. IHS Budget Formulation ~~Report to HHS~~ - Indian Tribes, and Tribal Organizations. Indian Tribes, and Indian Organizations. The IHS is responsible for preparing and ~~submitting-executing~~ an annual ~~report-planning and evaluation meeting to HHS, Indian Tribes, and Indian Tribal organizations~~ describing the consultation process used and outcomes related to the formulation of the proposed budget of the IHS. To effectively evaluate the budget formulation process and the ability of the IHS to incorporate Tribal recommendations, the IHS will assess:
- (1) the effectiveness of the methods used to receive ~~verbal comments-feedback~~ from participating Indian Tribes, ~~Indian Tribal~~ organizations, IHS management, and other invited participants regarding the consultation process used to formulate the budget;
 - (2) the results summary obtained from the evaluation forms provided to participating Indian Tribes, ~~Indian Tribal~~ organizations, and other invited participants to collect written feedback regarding the consultation process used to formulate the budget;
 - (3) the effectiveness of the consultation method implemented, including IHS and Tribal views regarding the level of attendance and the number of responses received from Tribal Officials;
 - (4) the effectiveness of IHS activities related to promoting Tribal consultation regarding the process used to formulate the budget;
 - (5) the effectiveness of collaboration with Indian organizations and other Federal agencies to resolve issues for the mutual benefit of the IHS and Indian Tribes;
 - (6) the recommendations received from IHS, Indian Tribes, and ~~Indian Tribal~~ organizations to improve the consultation process and promote meaningful outcomes; and
 - (7) the action plans to improve the consultation process used to formulate the budget.

6-6.6 IHS Budget Execution.

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A. New Funding. It is IHS policy to involve consult with Indian Tribes ~~in decision making that concerns regarding~~ the allocation of new funding (i.e., funding that is not in the existing base funding of an Indian Tribe(s) or congressionally earmarked for a specific Indian Tribe(s) that is provided as a result of the appropriations process). This policy is described in IHS Circular No. 92-5, "Budget Execution Policy (Allocation of Resources)." Barring legislative or administrative direction to the contrary, the appropriate consultative process for this purpose may use any tool or mechanism as agreed to by the IHS Area Director and the Indian Tribe(s) that is not inconsistent with IHS Circular No. 92-5.

B. Budget Information Disclosure. The IHS must initiate a process that provides the Indian Tribe(s) and Indian Tribal organization(s) with the following IHS budget-related information on an annual basis: appropriations, allocations, expenditures, and funding levels for programs, functions, services, and activities. Tribal requests for additional information shall be reviewed on a case-by-case basis and answered to the extent practicable, unless embargoed and/or prohibited by law.

~~B.C. Grants and Initiative-Related Funding. To the extent practicable and permitted by law, the IHS will initiate tribal consultation before determining whether to extend, shorten, or otherwise change any funding cycle. The IHS must initiate tribal consultation and involve Indian Tribes in decision making when IHS makes determinations to extend, shorten, or otherwise change any funding cycles. Also, IHS must involve Indian Tribes in decision making for allocation of unobligated funds and offset procedures.~~

6-6.7 IHS Tribal Consultation Performance and Collaboration.

A. IHS Annual Report to HHS. As part of the annual HHS Tribal consultation report, and in accordance with the HHS Tribal Consultation Policy, the IHS will report on an annual basis ~~how~~ the results and outcomes of Tribal consultation performance to fulfill the Government-to-Government relationship with Indian Tribes. ~~This will include:~~

Additionally, the IHS may report on any Area consultation effort or those conducted one-on-one with Tribes to highlight consultation successes, challenges, or best practices. The information in the Annual Report is a summary of, and should be compiled from, all the information captured during the year. Additionally, any information deemed sensitive or confidential by a Tribe should not be included in the Annual Report.

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- ~~1. the development and utilization of individualized critical performance elements to ensure consistency with the HHS Tribal consultation policy and its objectives;~~
- ~~2. the development of Tribal budget recommendations through the budget formulation process;~~
- ~~3. the promotion of a cooperative atmosphere with Indian Tribes to gather, share, and collect data between the IHS and Indian Tribes that demonstrates the effective use of Federal resources in a manner that is consistent with the Government Performance and Results Act (GPRA) performance measures and the OMB Program Assessment Rating Tool;~~
- ~~4. the consultation, to the greatest extent practicable within available resources and permitted by law, with Indian Tribes before taking actions that affect Indian Tribes, including regulatory practices on Federal matters and unfunded mandates;~~
- ~~5. the adequate assessment of the impact of the IHS activities on Tribal trust~~



~~A. IHS Report to HHS. The IHS is responsible for preparing and submitting an annual report describing Tribal consultation activity, including outcomes, to the HHS. The IHS report is subsequently included in the "HHS Annual Tribal Consultation Report." In order to effectively evaluate the effectiveness of Tribal consultation and the success of IHS in~~

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~~incorporating Tribal recommendations made as a result of consultation, the IHS annual report will address:~~

- ~~1. a discussion of the past years consultation process and activities and whether they resulted in meaningful outcomes for both the IHS and Indian Tribes,~~
- ~~2. a description of the level of support for the past years consultation activities from the perspective of Indian Tribes and IHS management, and~~
- ~~3. a discussion of the effectiveness of collaboration with Indian organizations and other Federal agencies that complemented the Tribal and IHS consultation process.~~

~~B.A. IHS Tribal Consultations Report Submitted to Indian Tribes and Indian Tribal Organizations After Tribal Consultation Occurs. Once the IHS completes Tribal Consultation, all recommended follow-up actions shall be tracked and reported to Indian Tribes and included in HHS' Annual Tribal Affairs Report. The IHS is Headquarters and Area Offices are responsible for preparing and submitting an ~~annual~~ report to Indian Tribes~~

-
- ~~(1) a description of the issue(s) that was the subject of consultation,~~
 - ~~(2) a description of the process that was used,~~
 - ~~(3) a discussion of the recommendations that resulted from the consultation ~~or~~ meeting(s),~~
 - ~~(4) a list of any follow-up action items and a time line for addressing these items, and~~
 - ~~(4)(5) a description of outcomes from Tribal Consultation, including whether the IHS how the Agency acted upon and/or incorporated recommendations and input received from Tribal Leaders and Indian Organizations Officials related to issues that were the subject of the consultation activity.~~

~~C. a discussion of the level of IHS and Tribal satisfaction with the consultation process that was used.~~

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~~D.B.~~ IHS Reports Regarding Specific Issues Assigned to Workgroups/Task Forces. The IHS is responsible for preparing written reports at the conclusion of each workgroup/taskforce meeting and providing these reports to participating Indian Tribes and Indian organizations in advance of the next scheduled meeting of the workgroup/taskforce. Recommended actions should be appropriately recorded in these reports. The reports should include, as appropriate:

- (1) a description of the issue(s) that is the subject of consultation in the workgroup/taskforce meeting,
- (2) a description of the process including an identification of workgroup members,
- (3) an up-to-date summary of the efforts of the workgroup/taskforce including recommendations provided, and
- (4) a description of the likely agenda items for subsequent meetings.

Subsequent to the final meeting of a workgroup/task force, a final report will be prepared that will provide a listing of recommendations made to the IHS. A discussion of Tribal and IHS satisfaction with the particular workgroup/task force will be provided.

~~—~~ Tribal Consultation Results. All documents developed to communicate decisions arrived at through Tribal consultation will be posted on the IHS Web site.

~~F.D.~~ Consultation with Other Groups. Although the unique Federal relationship with Indian Tribes is based in part on the fundamental concept of Government to Government relations, other statutes and policies exist that allow for Federal consultation with Indian organizations that, by the nature of their business, serve Indian people and might be affected if excluded from the consultation process. Even though such Indian organization individually or collectively. Such consultation is encouraged to the extent that there is not a conflict of interest with the Snyder Act of 1921 (P.L. 83-568), the IHS authorizing legislation, other applicable Federal statutes, or administrative policy.

6-6.8 FACA requirements apply when workgroups provide consensus advice to the federal government. The intergovernmental committee exemption to the FACA, which may apply to federal tribal meetings, is found at 2 United States Code 1534. When forming workgroups, the IHS adheres to the “HHS Tribal Consultation Policy” (Section 10A1b).

Exemption to the Federal Advisory Committee Act (FACA). The intergovernmental committee exemption to the FACA may apply to federal tribal meetings (2USC 1534).

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~~6-6.9 Conflict Resolution. IHS will review and where practical and permitted by law, streamline the process under which Indian Tribe may apply for waivers of statutory, regulatory, policy, or procedural requirements. Waiver requests for statutory or regulatory requirements apply only to statutory or regulatory requirements that are discretionary and subject to waiver by IHS. The intent of this policy is to provide an increased ability to solve problems. However, it is inherent in the Government to Government relationship that Indian Tribes may elevate an issue of importance to a higher decision-making authority.~~

- ~~A. Conflict Resolution Process. The intent of this policy is to promote respectful partnership with Indian Tribes that enhance the IHS's ability to address issues, needs, and problem resolution. The IHS shall consult with Indian Tribes to establish a resolution process under which Indian Tribes bring forward concerns regarding implementation of this policy. However, Indian Tribes and the IHS may not always agree, and inherent in the government-to-government relationship, Indian Tribes may elevate an issue of importance to a higher decision-making authority. The IHS will establish a clearly defined conflict resolution process in collaboration with Indian Tribes, under which Indian Tribes:~~
- ~~B. bring forward concerns which have a substantially direct effect on them, and~~
- ~~C.~~
- ~~D.A. apply for waivers of statutory and regulatory requirements that are subject to waiver by the IHS. The IHS will internally work on this process and identify applicable process and deadlines.~~

~~E.B. Tribal Waiver. The IHS shall, to the extent practicable and permitted by law;~~

- ~~(1) Consider any application by an Indian Tribe for a waiver with a general view toward increasing opportunities for utilizing flexible approaches at the Indian Tribal level when the proposed waiver is consistent with the applicable Federal policy objectives and is otherwise appropriate; and~~
- ~~(2) Render a decision upon a complete application for a waiver within 120 calendar days of receipt, or as otherwise provided by law or regulation. If the application for waiver is not granted, the IHS shall provide the applicant with timely written notice of the decision and the reasons therefore.~~

~~Waiver requests for statutory or regulatory requirements apply only to statutory or regulatory requirements that are discretionary and subject to waiver by the IHS.~~

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Consistent with Presidential Executive Order 13175, [and Presidential Memoranda \(November 5, 2009, January 26, 2021, and November 30, 2022\)](#), this policy 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 persons.

[6-6.10 Tribal Sovereignty](#). This policy does not waive any Tribal governmental rights, including treaty rights, sovereign immunity, or jurisdiction. Additionally, this policy does not diminish any rights or protections afforded other AI/AN people or entities under Federal law.

Our Nation, under the law of the United States and in accordance with treaties, statutes, Executive orders, and judicial decisions, has recognized the right of Indian Tribes to self-govern. 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 Tribal self-governance, Tribal trust resources, and Tribal treaty and other rights.

A constitutional relationship among sovereign governments is inherent in the very structure of the Constitution and is formalized in and protected by Article I, Section 8. Increasingly, this special relationship has emphasized self-determination and meaningful involvement [and consultation](#) for Indian Tribes in Federal decision making (consultation) where such decisions affect Indian Tribes. [Indian Tribes participation early and often in the development of programs, policies, regulations, and initiatives ensures relevant and culturally appropriate approaches to health and human services. The involvement of Indian Tribes in the development of public health and human services policy allows for locally relevant and culturally appropriate approaches to public issues.](#)

A. [Tribal self-government has been demonstrated to improve and perpetuate the Government to Government relationship and strengthens Tribal control over Federal funding and program management.](#) [Philosophy](#). Indian Tribes have, through the cession of more than 400 million acres of land to the United States in exchange for promises, among other things, of health care, often reflected in treaties, secured the right to health care from the United States based on the moral, legal, and historic obligations of the United States to AI/AN people.

[Indian Tribes have an inalienable and inherent right to self-govern. Self-government means a government in which decisions are made by the people who are most directly affected by them. As sovereign Nations, Indian Tribes exercise inherent sovereign powers over their members, territory, and lands.](#)

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The IHS exists to provide health services to Indians and has a commitment to working in partnership on a Government-to-Government basis with Indian Tribes. The IHS is committed to enhancing collaboration and partnership between its operating units and Area Offices with Indian Tribes to ensure that the requirement for Tribal consultation permeates the entire IHS system. The IHS is further committed to assisting Indian Tribes to advocate for voice and advance their priorities with all Department of Health and Human Services (HHS) Divisions including Regional Offices and State governments/agencies.

~~The Office of Tribal Programs and the Office of Tribal Self-Governance within the Office of the Director are identified as the responsible offices within the IHS for monitoring compliance with the IHS Tribal Consultation Policy.~~

- B. IHS Employee Training: The IHS requires all employees who work with Tribal Nations or on policies with Tribal implications to complete annual Tribal consultation training. This training shall include, at minimum, review of EO 13175, the President’s Memorandum on Uniform Standards for Tribal Consultation, and this policy. Tribal consultation training modules established by the Secretary of Interior and Director of the Office of Personnel Management may also be used to satisfy the annual training requirement.

§1601 et seq.

- ~~A.B. Consultation. Consultation is a formal and meaningful government-to-government process involving communications, which emphasizes trust, respect, and shared responsibility. It is an open and free exchange of information, ideas, and positions among parties, which leads to mutual understanding and comprehension. Consultation is integral to a deliberative and timely process, which results in effective collaboration and informed decision making with the ultimate goal of reaching consensus on issues and policies affecting Indian Tribes. An enhanced form of communication that emphasizes trust, respect and shared responsibility. It is an open and free exchange of information. Consultation is integral to a deliberative process, which results in effective collaboration and informed decision making with the ultimate goal of reaching consensus on issues.~~

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~~B.C. Critical Events. Planned or unplanned event(s) that have or may have Tribal [and/Tribal Organizations] implication(s), e.g., statutory requirements, regulations, issues, policies, or budgets which may come from any level within IHS-substantial impact on Indian Tribes or Indian communities, e.g., issues, policies, or budgets.~~

~~C.D. Deliberative Process Privilege. A privilege exempting the Government from the disclosure of Government agency materials containing recommendations, opinions, and other~~



~~E. Indian. A person who is a member of an Indian Tribe. (25 United States Code (U.S.C.)~~

~~Native.~~

~~E. Indian Organization. Any regional or national organization whose board is comprised of Federally recognized Tribes, Intertribal organizations, other regional organizations, and/or elected/appointed Tribal leaders, and the organization's purpose is to advocate for its members. The government does not participate in government-to-government consultation with these entities; rather these organizations advocate the interests of Tribes when authorized by those Tribes. Those Federally recognized Tribally constituted entities that have been designated by their governing body to facilitate communications and consultation activities [with IHS]. Any regional or national organization whose board is comprised of Federally recognized Tribes and elected/appointed Tribal leaders. Any group, association, partnership, corporation, or legal entity owned or controlled by Tribes or Indians, or with a majority of members who are Indian.~~

~~F. Indian Tribe. Any Indian or Alaska Native Tribe, band, nation, pueblo, village or community that the Secretary of Interior acknowledges to exist as an Indian Tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. § 5130-5131. 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), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. (See 25 U.S.C. Sec 450b.)~~

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- G. Intertribal Consortium. Intertribal consortium means a coalition of two or more separate Indian Tribes that join together for the purpose of participating in self-governance, including tribal organizations. See 25 U.S.C. 5381(a)(5).
- H. Intertribal Organization. An organization that includes two or more Indian Tribes, a Tribal Organization representing two or more Indian Tribes, and/or an intertribal consortium, as those terms are defined in the ISDEAA, to act on behalf of the member Indian Tribes.
- G.I. Joint Tribal/Federal Workgroups and/or Task Forces. A group composed of individuals who are Tribal Officials, appointed by federally recognized Indian Tribes and/or Federal agencies, to represent their interests while working on a particular policy, practice, issue and/or concern.
- H.J. Policies with Tribal Implications. Refers to regulations, legislation, and other policy statements or actions that have substantial direct effects on one Indian Tribe or more 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.
- ~~I. Sovereignty. The ultimate source of political power from which all specific political powers are derived.~~
- ~~J. Substantial Direct Compliance Costs. Costs incurred directly from the implementation of changes necessary to meet the requirements of a Federal regulation. Because of the large variation in Indian Tribes, "substantial costs" is also variable by Indian Tribes. Each Indian Tribe and the Director, IHS, shall mutually determine the level of costs that represent "substantial costs" in the context of the Indian Tribe's resource base.~~
- L. Treaty. A legally binding and written agreement that affirms the Government-to-Government relationship between two or more nations, and is the supreme law of the land in Article VI of the U.S. Constitution.
- M. Tribal Officials. ~~An e~~Elected/ or duly appointed officials of Indian Tribal Governments or authorized Intertribal Organizations Tribal Leader or official delegate designated in writing by an Indian Tribe.
- M.N. Tribal Organization. The recognized governing body of any Indian tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: Provided, That in any case where a contract is let or

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grant made to an organization to perform services benefiting more than one Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the letting or making of such contract or grant. See 25 U.S.C. 5304(1).

~~N.O. Tribal Resolution. A formal expression of the opinion or will of an official Tribal governing body, that is adopted by vote of the Tribal governing body.~~

~~O.P. Tribal Self-Governance Government. The governmental actions of Tribes exercising self-~~

~~B. When Consultation Occurs.~~

- ~~1. When the IHS Director/Deputy Directors, and/or their designee, and a Tribal Official and/or his/her designee meet or exchange written correspondence to discuss any issue(s) concerning either party.~~

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~~2. When an Area Director, and/or his/her designee meets or exchanges written correspondence with a Tribal Official and/or his/her designee to discuss any issue(s) concerning either party.~~

~~3. When a service unit CEO and/or his/her designee meet or exchanges written correspondence with a Tribal Official and/or his/her designee to discuss any issue(s) concerning either party.~~

~~C. Level of Consultation. Upon the determination of the level of consultation necessary, proper notice of the critical event and the level of consultation to be used shall be communicated to affected/potentially affected Indian Tribes using all appropriate methods. These methods include but are not limited to the following:~~

~~1. Correspondence. Written communications should clearly provide affected/potentially affected Indian Tribe(s) of the critical event and the manner in which to provide comment. The IHS frequently uses a "Dear Tribal Leader Letter" to notify individual Indian Tribes of consultation~~

~~2. Meetings. When the critical event is determined to have substantial direct~~

~~comments by the affected Indian Tribe(s) regarding critical events.~~

~~D. Official Tribal Correspondence. Correspondence submitted by Indian Tribes to the IHS shall be referred to the appropriate IHS program office.~~

~~1. Tribal Resolution. Communications from Indian Tribes frequently come in the form of Tribal resolutions. A resolution may be the most formal declaration of an Indian Tribe's position for the purpose of Tribal consultation. Once the IHS receives a Tribal resolution, the Agency should respond appropriately. An appropriate response may include Tribal consultation.~~

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- ~~2. Tribal Executive Correspondence. The IHS will give equal consideration to correspondence received from the executive branch of an Indian Tribe as is provided to a Tribal resolution.~~
- ~~3. Response. A response regarding a Tribal resolution and/or Tribal executive correspondence shall be provided by the IHS within 60 calendar days to the Indian Tribe(s).~~
- ~~E. Schedule for Consultation. The IHS must establish and adhere to a formal schedule of meetings to consult with the Indian Tribe(s) and their representatives concerning the planning, conduct, and administration of applicable activities. The IHS must involve Tribal Officials in meetings at every practicable opportunity. The IHS is encouraged to work with Indian Tribes to establish additional forums for Tribal consultation, participation, and information sharing.~~
- ~~F. Policy Development through Tribal Consultation. The need to develop a policy may be identified from within the IHS or may be identified by an Indian Tribe(s). This need may result from external forces such as Executive, Judicial, or Legislative Branch directives. Once the need to develop a policy is identified, the IHS will respond within 60 calendar days to the request. The consultation process must begin in accordance with critical events and level of consultation upon the receipt of the IHS response. (See Section 9A, B, and C to determine the level of consultation.)~~

6-6.12 SUMMARY. This circular considers a wide range of needs and unique characteristics in crafting these guidelines; therefore it is important for the IHS consultation policy to remain dynamic and be responsive to changing circumstances that affect Indian Tribes. The IHS will seek to integrate its efforts with those of other Federal Departments and agencies. Such intra-governmental coordination will benefit the Federal Departments and agencies as well as [Indian Tribes](#) and [Indian-Tribal](#) organizations.

6-6.13 ACRONYMS.

AI/AN: American Indians ~~and~~ Alaska Natives

CEO: Chief Executive Officer

FACA: Federal Advisory Committee Act

FR: Federal Register

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~~GPPRA: Government Performance and Results Act~~

HHS: Department of Health and Human Services

~~ICNAA: Intradepartmental Council on Native American Affairs~~ IGEA: Intergovernmental and External Affairs

IHS: Indian Health Service

OMB: Office of Management and Budget

~~PART: Program Assessment Rating Tool~~

P.L.: Public Law

U.S.C.: United States Code

6-6.14 Supersedure. This ~~policy~~ircular supersedes IHS Circular No. ~~2001-07~~ 2006-01, dated ~~September 21, 2001~~ January 18, 2006.

6-6.15 Effective Date. This circular is effective on the date of signature by the Director, IHS.

~~Charles W. Grim, D.D.S., M.H.S.A.~~

~~Assistant Surgeon General
Director, Indian Health Service~~

~~/Charles W. Grim, D.D.S./~~Roselyn Tso

Director, Indian Health Service

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ADDENDUM 1

Joint Tribal/Federal Workgroups and/or Task Forces. Although the special "Tribal-Federal" relationship is based in part on the Government-to-Government relationship, it is frequently necessary for the IHS, with Tribal concurrence, to establish joint Tribal/Federal workgroups and/or task forces. These workgroups/taskforces will be charged to address issues and complete work needed to develop and/or modify any policies and practices. ~~These workgroups and/or task forces do not take the place of Tribal consultation but offer an enhancement by gathering individuals together with expertise on a particular policy, practice, issue and/or concern to work collaboratively and offer recommendations for consideration by Indian Tribes and Federal agencies.~~ The subsequent work products and/or outcomes developed by these workgroups and/or task forces will be handled in accordance with this policy.

A. Membership Notices. ~~The IHS shall seek nominations from Indian Tribes to participate in Workgroups/Taskforces. The IHS Director or their designee shall select Workgroup primary and alternate members that represent various regionals and/or views of Indian Country. Membership of these Workgroups shall be in compliance with the Federal Advisory Committee Act (FACA) unless the Workgroup is exempt. Membership on workgroups shall be widely solicited with the intent to reach all Indian Tribes by requesting membership nominees from all Indian Tribes and/or Alaska Native Corporations Indian organizations, in accordance with Section 15 below, as applicable.~~

~~B.~~

~~C.B.~~ Meeting Notices. The purpose, time frame, and specific tasks shall be clearly identified in the notice. All meetings will be open and widely publicized, at a minimum through the IHS Calendar of Events. ~~the Office of Tribal Self-Governance, the Office of Tribal Programs, and the office initiating the policy.~~

~~D.C.~~ Membership Composition Workgroup/Task Forces. The Indian Tribe(s) and the IHS should be equally represented in workgroups, if not, then Tribal representatives members should be in the majority. Tribal representativesmembers should be selected based on volunteer responses or nominations received as a result of the notice, and if possible, should represent a cross-section representatives of the affected parties. When the IHS uses Workgroups to assist the consultation process, FACA requirements apply, unless exempt in accordance with section 204(b) of the Unfunded Mandates Reform Act of 1995 (UMRA). 2 U.S.C. §1534(b). The IHS and/or Tribal staff may serve in a technical advisory capacity. ~~Tribal staff may accompany the workgroup leader and serve to advise him/her. The IHS staff may serve in a technical advisory capacity to the workgroup.~~

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D. Participation.

- (1) Attendance at Meetings. Workgroup members must make a good faith effort to attend all meetings. Tribal staff may accompany work group members and serve to advise them in private; however, FACA requirements will be adhered to at meetings unless exempt. ~~Other individuals may accompany members as the members believe it is appropriate to represent their interest.~~
- (2) Appointment of Alternates. ~~Unless the charge states otherwise, each workgroup member may appoint an alternate a proxy by written notification. In cases where a Tribal Official appoints an alternate a delegate who is not an elected official, the alternate delegate shall represent the primary member in the workgroup. The alternate delegate will have the same voting rights, voice, and membership rights as the primary member, as designated in the letter by that Tribal Official.~~
- (3) Workgroup Protocols. The workgroup may establish protocols to govern the meetings. Such protocols will include but are not limited to the following:
 - a. selection of workgroup co-chairs (Tribal/Federal), if applicable,
 - b. role of workgroup members, and attendees, including technical/legal advisors
 - c. process for decision making (consensus-based or otherwise), and
 - d. process for determining drafting and availability of all final workgroup products and documents.
- (4) Workgroup Charge. Prior to the workgroup formulation, the IHS may develop an initial workgroup charge in enough detail to define the policy concept and workgroup purpose. Once established, the workgroup will may develop recommendations for the final workgroup charge for the approval of the Director, IHS.
- (5) Workgroup Final Products. Early consultation with the IHS Division of Regulatory and Policy Coordination (DRPC) Management Policy and Internal Control Staff (MPICS) is recommended to discuss options for the policy format and placement in the Indian Health Manual.

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- a. Upon completion, the draft policy documents will be distributed informally to the Indian Tribe(s) ~~and Indian organization(s)~~ for ~~review and comment and to allow for maximum possible informal review~~ consultation.
 - b. A concurrent internal IHS review and comment period will be initiated ~~by MPICS-DRPC~~ in accordance with ~~Part 1, Chapter 1 the~~, "Indian Health Service Manual System," Indian Health Manual.
 - c. Comments from the Indian Tribe(s) will be returned to the workgroup, which will meet in a timely manner to discuss the comments and determine the next course of action.
 - d. Comments from IHS staff ~~and Indian Tribes, and Indian Organizations~~, will be ~~coordinated by MPICS, compiled, and provided to the Office of Tribal Programs compiled, and provided to the relevant IHS office~~ for ~~its~~ review and recommended action, which may include further discussion with the workgroup.
 - e. If the proposed draft policy is ~~considered to be substantially~~ complete as written, the workgroup ~~proposed policy~~ will forward the proposed policy draft document to the Director, IHS, as final recommendation(s) for ~~general endorsement consideration and endorsement~~.
 - ~~f. The workgroup will also recognize any contrary comments in its final report.~~
 - ~~g. If it is determined that the policy should be rewritten, the workgroup will rewrite it and begin informal consultation again at the initial step above.~~
 - ~~h. If the proposed policy is generally acceptable to the IHS Director, final processing of the policy by MPICS will be accomplished.~~
- (6) Recommendations and Policy Implementation. All final recommendations by the workgroup shall be considered by the Director, IHS. Once the consultation process is completed and a policy decision is finalized, the final policy shall be broadly distributed to all Indian Tribes and Indian Tribal organizations.