

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 goal of health equity for American Indians and Alaska Natives (AI/AN) by ensuring that their access to critical health services is maximized to achieve optimal health status. To achieve 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, 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, 2004, 2009, 2021, and 2022, as well as Executive Order (EO) in 2000. 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 of Indian Tribes in policy development and program activities to ensure that Tribal health priorities and goals are a meaningful part of IHS's decision making process.
- (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.
- (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.

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- (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 Indian health priorities.
- (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 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:

- (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;
- (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;
- (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;

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- (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:

- (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
- (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.

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,

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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 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. 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 any regulation that has Tribal implications, or that imposes substantial direct-compliance costs on Indian Tribes, or that is not required by statute, unless:
 - 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) consulted with Indian Tribes throughout all stages of the process of developing the proposed regulation;
 - (b) 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), 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) made available to the Director, IHS, any written communications regarding the proposed regulations submitted to the Agency by Tribal Officials.

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- c. To the extent practicable and permitted by law, the IHS shall not promulgate any regulation that has Tribal implications and that preempts Tribal law unless the IHS, prior to the formal promulgation of the regulation:
 - i. consulted with Tribal Officials throughout all stages of the process of developing the proposed regulation;
 - ii. 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 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
 - iii. made available to the Director, IHS, any written communications submitted to the Agency by Tribal Officials.
- d. On issues relating to Tribal self-governance, Tribal self-determination, Tribal trust resources, or Tribal treaty and other rights, the IHS shall make all practicable attempts where appropriate to use consensual mechanisms for developing regulations, including negotiated rulemaking.

6-6.2 Responsibilities

- 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

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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.

- 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 Indian Tribes, individually and/or collectively.
- C. Indian Organizations. 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.
- (1) Will engage and oversee open, continuous, and meaningful consultation with Indian Tribes to the extent practicable and permitted by law when a new or revised national policy(ies) affects and Indian Tribe(s).
 - (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.
- E. Area Directors.
- (1) Will initiate consultation with Indian Tribes located in their respective region and may establish various Area committees or workgroups comprised of delegated Tribal Officials to gather advice from all Indian Tribes served by the respective Area Office. If all Indian Tribes are not represented by the committee or workgroup, the Area Director will develop a process to ensure that full consultation with all Indian Tribes within the Area is coordinated.
 - (2) Consult with Area Indian Tribes on an as-needed basis, at minimum of once a year, on topics affecting Area Indian Tribes.

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(3) Coordinate, communicate, and collaborate with the HHS Regional Directors for the specific regions of which the IHS Area is a part of on issues that are pertinent to Indian Tribes in the respective regions and Area.

F. Federal Service Unit Chief Executive Officers (CEOs). Coordinate, communicate, collaborate, and provide regular updates with and to the Indian Tribe(s) served by the Federal Service Unit. Any decisions or recommendations made through consultation at this level will be formally communicated and coordinated through the respective Area Director.

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) 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.

6-6.3 Procedures.

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. All levels of IHS management shall ensure that the requirements of this policy are satisfied.

B. Consultation Mechanisms

(1) 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.

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- (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.
 - (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.
- C. Consultation Parties. The ODSCT Director and the 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 designee meet or exchange written correspondence to discuss any issue(s) concerning either party.
 - (2) When an Area Director, and/or their designee meets or exchanges written correspondence with a Tribal Official and their designee to discuss any issue(s) concerning either party.
 - (3) When a Federal Service Unit CEO and/or their designee meet or exchanges written correspondence with a Tribal Official and/or 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).

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- (2) Identify affected/potentially affected Indian Tribe(s)
 - (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.
- 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 methods include but are not limited to the following:
- (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;
 - 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;

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- 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 participate in the consultation.
- (3) Other types of meetings 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. 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.

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.

A response regarding an official Tribal correspondence shall be provided by the IHS within 60 calendar days to the Indian Tribe(s).

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- 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.
- H. Policy Development through Tribal Consultation. The need to consult on the development or revision of a policy may be identified from within the IHS or may be identified by an Indian Tribe(s). Consultation may be initiated in response to Executive, Judicial, or Legislative Branch directives. Once the need to 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 the outcomes of the consultation in accordance with Section 6-6.6 and Section 6-6.7. This 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 provided directly to an Indian Tribe(s).
- 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. 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. In such cases, see Addendum 1, which outlines the process for establishing such aforementioned workgroups and/or task forces.

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. 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. Timeframe. In order to ensure that Indian Tribes are able to provide meaningful input for the IHS budget request, the IHS shall use the following timeframe to coincide with the HHS schedule:
- (1) October through December - Individual IHS Area budget formulation work sessions.
 - (2) February through March -National IHS budget formulation work session.
 - (3) April - Tribal presentation of national priorities and recommendations at the National HHS Tribal Budget Formulation and Consultation Session.
 - (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 Office of Management and Budget (OMB), at which Tribal presentation of national priorities and recommendations can be presented to OMB.

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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 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 the health and budget priorities for the Area.
- (2) The Area budget formulation team 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 to all recommendations provided by the National Tribal Budget Formulation Workgroup.
- (5) Reviews the annual President's Budget with the National Tribal Budget Formulation Workgroup after the budget has been made public.

D. National Tribal Budget Formulation Workgroup Session. The national budget formulation work session is conducted yearly to consolidate 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 by the Area Budget Teams. 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) for the purpose of participating in the National Tribal Budget Formulation Workgroup shall be the responsibility of the IHS.

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- F. IHS Budget Formulation Planning and Evaluation Meeting with Indian Tribes, and Tribal Organizations. The IHS is responsible for preparing and executing an annual planning and evaluation meeting 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 feedback from participating Indian Tribes, 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, 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 Tribal organizations to improve the consultation process and promote meaningful outcomes; and the action plans to improve the consultation process used to formulate the budget.

6-6.6 IHS Budget Execution.

- A. New Funding. It is IHS policy to consult with Indian Tribes 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.

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- B. Budget Information Disclosure. The IHS must initiate a process that provides the Indian Tribe(s) and 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.
- 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.

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 the results and outcomes of Tribal consultation performance to fulfill the Government-to-Government relationship with Indian Tribes.

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.

6-6.8 IHS Meeting Records, Evaluation, and Reporting. The IHS is responsible for appropriately reporting on and evaluating consultation activities and outcomes. 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. The level of reporting should be consistent with the level of consultation described in Section 9C of this policy. The IHS will report on consultation activities and communicate the nature of these sessions and outcomes to HHS, Indian Tribes, and Tribal organizations using the following means:

- A. IHS Tribal Consultations Report Submitted to Indian Tribes and 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 Headquarters and Area Offices are responsible for preparing and submitting a report to Indian Tribes and Tribal organizations upon the conclusion of the consultation activity. At a minimum the report should include:

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- (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 meeting(s),
- (4) a list of any follow-up action items and a time line for addressing these items, and
- (5) a description of outcomes from Tribal Consultation, including whether the IHS incorporated recommendations and input received from Tribal Officials.

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 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) 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.

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

6-6.9 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

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relationship, Indian Tribes may elevate an issue of importance to a higher decision-making authority.

A. 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.

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,

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policies, regulations, and initiatives ensures relevant and culturally appropriate approaches to health and human services.

- A. 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.
- 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.

6-6.11 Definitions.

- A. Alaska Native Corporations. Alaska Native Claims Settlement Act of 1971 Corporation (ANC): Any Alaska Native village corporation, urban corporation, or regional corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. §1601 et seq.
- 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.
- C. Critical Events. Planned or unplanned event(s) that have or may have Tribal implication(s), e.g., statutory requirements, regulations, issues, policies, or budgets which may come from any level within IHS.
- D. Deliberative Process Privilege. A privilege exempting the Government from the disclosure of Government materials containing recommendations, opinions, and other communications that are part of the decision making process within the agency.

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- E. Executive Order and Presidential Memoranda. An order or memoranda issued by the Government's executive branch on the basis of authority specifically granted to the executive branch (as by the U.S. Constitution or an Act of Congress).
- F. 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.
- G. 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.
- H. 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).
- I. 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.
- J. 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.
- K. 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.
- 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.

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- M. Tribal Officials. Elected or duly appointed officials of Indian Tribal Governments or authorized Intertribal Organizations.
- 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 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).
- O. Tribal Resolution. A formal expression or will of an official Tribal governing body.
- P. Tribal Self-Governance. The governmental actions of Tribes exercising self-government and self-determination.
- Q. Tribal Sovereignty. The ultimate source of political power from which all specific political powers are derived.
- R. Urban Indian Organization. The term "urban Indian organization" means a nonprofit corporate body situated in an urban center, governed by an urban Indian controlled board of directors, and providing for the maximum participation of all interested Indian groups and individuals, which body is capable of legally cooperating with other public and private entities for the purpose of performing the activities described in [25 U.S.C. § 1653(a)]. 25 U.S.C. § 1603(29).

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 Tribes and Tribal organizations.

6-6.13 ACRONYMS.

AI/AN: American Indians/Alaska Natives

CEO: Chief Executive Officer

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FACA: Federal Advisory Committee Act

FR: Federal Register

HHS: Department of Health and Human Services

IEA: Intergovernmental and External Affairs

IHS: Indian Health Service

OMB: Office of Management and Budget

P.L.: Public Law

U.S.C.: United States Code

6-6.14 Supersedure. This policy supersedes IHS Circular No. 2006-01, dated January 18, 2006.

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



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. 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-
- 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.
- C. Membership Composition Workgroup/Task Forces. The Indian Tribe(s) and the IHS should be equally represented in workgroups, if not, then Tribal representatives should be in the majority. Tribal representatives should be selected based on volunteer responses or nominations received as a result of the notice, and if possible, should represent 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.
- D. Participation.

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.

- (1) 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,

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- 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.
- (2) 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 may develop recommendations for the final workgroup charge for the approval of the Director, IHS.
- (3) Workgroup Final Products. Early consultation with the IHS Division of Regulatory and Policy Coordination (DRPC) is recommended to discuss options for the policy format and placement in the Indian Health Manual.
- a. Upon completion, the draft policy documents will be distributed informally to the Indian Tribe(s) for consultation.
 - b. A concurrent internal IHS review and comment period will be initiated DRPC in accordance with 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-will be compiled, and provided to the relevant IHS office for review and recommended action, which may include further discussion with the workgroup.
 - e. If the proposed draft policy is complete as written, the workgroup will forward the draft document to the Director, IHS, as final recommendation(s) for consideration and endorsement.

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 Tribal organizations.