

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482-0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at [dHynek@doc.gov](mailto:dHynek@doc.gov)).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Wendy Liberante, OMB Desk Officer, Fax number (202) 395-5806 or via the Internet at [Wendy\\_L\\_Liberante@omb.eop.gov](mailto:Wendy_L_Liberante@omb.eop.gov).

Dated: October 24, 2008.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

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## DEPARTMENT OF COMMERCE

### Bureau of the Census

[Docket Number 070404074-8894-03]

#### American Indian and Alaska Native Policy Statement

**AGENCY:** Bureau of the Census, Department of Commerce.

**ACTION:** Notice of final policy statement.

**SUMMARY:** In preparation for the 2010 Census, the Bureau of the Census (Census Bureau) adopts the following American Indian and Alaska Native (AIAN) policy statement. This final policy outlines the principles to be followed in all Census Bureau interactions with federally recognized AIAN tribal governments. The policy affirms the unique government-to-government relationship that exists between AIAN tribal governments and the Census Bureau and is consistent with the AIAN policy statement adopted by the Department of Commerce (DOC) on March 30, 1995. The adoption of this policy satisfies a long-standing request from AIAN populations, and the Census Bureau believes it will encourage and facilitate greater cooperation from these populations during decennial censuses and help us to better communicate with and enumerate this difficult-to-count population. This Notice also summarizes comments received on the draft AIAN policy statement published in the **Federal Register** on May 23, 2007 (72 FR 28952) and the Census Bureau's response to these comments. The policy statement adopted in this Notice differs from the proposed policy statement as follows: (a) The Introduction section

was modified in response to comments received; (b) the definition of Federally Recognized Indian Tribe was modified in response to comments; (c) the definition of trust responsibility was deleted after agency review; (d) the definition of American Indian or Alaska Native Tribal Government was modified after agency review; (e) proposed Policy Principle No. 2 is renumbered as Policy Principle No. 4; (f) proposed Policy Principle No. 3 is renumbered as Policy Principle No. 5; (g) proposed Policy Principle No. 4 was modified in response to comments and is renumbered as Policy Principle No. 2; (h) proposed Policy Principle No. 5 is renumbered as Policy Principle No. 6; (i) proposed Policy Principle No. 6 was modified in response to comments and is renumbered as Policy Principle No. 7; (j) proposed Policy Principle No. 7 is renumbered as Policy Principle No. 8; (k) proposed Policy Principle No. 8 is renumbered as Policy Principle No. 9; and (l) proposed Policy Principle No. 9 was modified in response to comments and is renumbered as Policy Principle No. 3.

**DATES:** *Effective Date:* This final policy will be effective on December 1, 2008.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the final policy should be directed to Dee Alexander, Program Analyst, Decennial Management Division, Outreach and Promotions Branch, U.S. Census Bureau, Room 3H166, 4600 Silver Hill Road, Stop 7100, Washington, DC 20233-7100, telephone (301) 763-9335.

**SUPPLEMENTARY INFORMATION:**

**Background**

The government-to-government relationship with Native American tribal governments (adopted by previous administrations) was reaffirmed by President George W. Bush in a White House Memorandum dated September 23, 2004. Among other things, this memorandum directs the heads of executive agencies to continue to ensure that, to the greatest extent practicable and permitted by U.S. law, the agency's working relationship with federally recognized tribal governments fully respect the rights of self-government and self-determination due tribal governments. Pursuant to an earlier White House Memorandum of April 29, 1994, the DOC adopted an AIAN policy statement on March 30, 1995. The Census Bureau is now adopting the AIAN policy statement set forth in this notice, which is consistent with the previously cited Presidential

Memoranda and the DOC policy statement.

This final policy statement is intended only for internal management purposes and does not create any right, benefit, or trust responsibility enforceable against the United States, its agencies, entities, or instrumentalities, its officers or employees, or any other person. The Census Bureau believes that this final policy statement will contribute to the accuracy of the 2010 Decennial Census by improving communications and encouraging greater cooperation with difficult-to-count populations.

#### Summary of Comments Received in Response to the Draft American Indian and Alaska Native Policy Statement

The Census Bureau published a Notice and request for comments on a draft American Indian and Alaska Native (AIAN) policy statement in the **Federal Register** on May 23, 2007—(72 FR 28952). We received 13 comments in response to the draft AIAN policy statement. A summary of comments received and the Census Bureau's responses to these comments are presented below.

(1) One commenter suggested that the words "executive orders" be inserted in the Introduction section of the policy statement. The Census Bureau accepted this suggestion since it is consistent with the fundamental principles of the Federal Government's government-to-government relationship with federally recognized tribes that includes executive orders issued by the White House (e.g., Executive Order 13175 of November 6, 2000—"Consultation and Coordination with Indian Tribal Governments").

(2) One commenter suggested that the word "political" be inserted before the word "status" in the definition of *Federally Recognized Indian Tribes*. The Census Bureau accepted this suggestion and added the words "and legal" to this definition since both terms have been used to describe the relationship between the United States and AIAN populations (See, e.g., White House Memorandum of September 23, 2004—"Government-to-Government Relations with Native American Tribal Governments").

(3) One commenter suggested adding the words "and individuals" to the definition of *Trust Responsibility*. The Census Bureau has determined to delete this definition from its policy statement since it does not exercise trust responsibilities as that term is commonly used in treaties, statutes, executive orders, and regulations

governing the relationship between the United States and AIAN populations.

(4) Two commenters suggested inserting the words “on and off reservations” after the words “AIAN areas” in proposed Policy Principles No. 2, 5, and 6. For similar reasons, one commenter suggested inserting the phrase “living in AIAN areas on and off reservations” after the word “resident” in proposed Policy Principle No. 8. The commenter noted that the proposed policy statement mentions that special attention will be paid to those living in an AIAN area. The commenter asked the Census Bureau to consider the unique situations of tribal members who do not live in their tribal membership area or the geographic AIAN area as that term is used by the Census Bureau. “American Indian and Alaska Native areas” are very specialized terms used by the Census Bureau to describe the collection of data during decennial censuses. During Census 2000, this term was the subject of a single **Federal Register** Notice (*See*, 65 FR 39062). For the 2010 Census, we will make these terms the subject of separate **Federal Register** Notices (*See*, 73 FR 14203 and 73 FR 17303). The Census Bureau does not adopt the suggestion to modify the term “AIAN areas” since we believe the generic term is adequate for purposes of this Policy statement and is likely to generate less confusion with respect to the use and meaning of the term in other Census Bureau notices. However, the Census Bureau adopts the suggestion to insert the phrase “living in AIAN areas” after the word “resident” in proposed Policy Principle No. 8.

(5) A commenter suggested inserting the words “and implementation” after the word “planning” in proposed Policy Principle No. 3. The commenter stated that Principle No. 3 refers to planning only and should include tribal government’s involvement in the implementation process. The Census Bureau accepted this suggestion since it is consistent with the Census Bureau’s commitment and current practice to work in partnership with tribal governments when conducting census activities within tribal communities.

(6) One commenter suggested that the following text should be added to proposed Policy Principle No. 4. “The Census Bureau acknowledges the trust relationship between the federal government and AIAN tribes as established by specific statutes, treaties, court decisions, executive orders, regulations and policies.” This commenter also suggested that proposed Policy Principle No. 4 should be given greater prominence by renumbering it as Policy Principle No. 2. The commenter

recommends that the Census Bureau AIAN policy be restated so that it is consistent with DOC’s AIAN policy and clarifies the Bureau’s intent to consult with tribal nations prior to taking any action affecting tribes. The Census Bureau adopts these suggestions since they bring the Census Bureau’s policy in alignment with the text of the DOC’s AIAN Policy Statement.

(7) One commenter suggested adding the words “tribal protocols” after the word “distinct” to proposed Policy Principle No. 6 and another suggested adding the word “values” after the word “cultural.” The commenter stated that many tribal governments now have research protocols that govern data collection on their lands and from tribal members. Using tribal protocols will also mean that tribes will be aware of and plan for Census Bureau count activities. The Census Bureau accepts these suggestions since they are consistent with the other terms found in proposed Policy Principle No. 6.

(8) One commenter suggested adding the words “and work” after the word “consult” and the phrase “and throughout the planning and implementation of policy, rules or” after the word “decisions” to proposed Policy Principle No. 9 and renumber Policy Principle No. 9 as Policy Principle No. 3. The commenter stated further that these changes would make the Census Bureau AIAN policy consistent with DOC’s AIAN policy and clarify the Bureau’s intent to consult with tribal nations prior to taking any action affecting tribes. The Census Bureau adopts these suggestions since they are consistent with the Bureau’s current practice regarding collaborative efforts with AIAN populations and combining the two principles results in a more streamlined statement.

(9) A commenter suggested inserting the words “or regional or village corporation” after the words “including any Alaska Native village” in the definition of *Federally Recognized Indian Tribe*. As the basis for this suggestion, the commenter cited the definition of *Federally recognized tribe* in the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*) that includes the word “regional” and recognizes as tribes regional corporations established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*). The Census Bureau does not adopt this suggestion because the definition in the proposed Policy Statement is consistent with the text in the definition for Indian tribe (or tribe) in the DOC AIAN Policy Statement on

which the Census Bureau’s Policy Statement is based.

(10) The Census Bureau received two comments that were outside the scope and nature of the AIAN policy statement. One comment expressed concern about the Local Update of Census Addresses (LUCA) program. The Census Bureau acknowledged the comment with a formal letter discussing a Census Bureau program change for the LUCA program. A second comment expressed general concerns about the AIAN policy statement, the LUCA program, and the AIAN Geographic Program. The Census Bureau acknowledged the comment with a formal letter.

### **Changes to Draft American Indian and Alaska Native Policy Statement as a Result of Public Comments and Further Agency Review**

The Census Bureau makes the following changes to the draft AIAN policy statement.

#### *(A) Section I—Introduction*

Insert the words “executive orders” after the words “court decisions” so that the sentence now reads as follows: “This relationship is based on the United States Constitution, federal treaties, policy, law, court decisions, executive orders, and the on-going political relationship among tribes and the federal government. The relationship results in a federal trust responsibility to federally recognized tribal governments.”

#### *(B) Section II—Definitions*

(i) Under the definition of *Federally Recognized Indian Tribe*, insert the words “political and legal” in front of the word “status,” so that the revised phrase now reads as follows: “relationships established by the United States for indigenous people because of their political and legal status as AIAN tribes, Bands, Nations, Pueblos or communities.”

(ii) Modify the definition of American Indian and Alaska Native Tribal Government to read as follows: “The recognized government of an Indian tribe and any affiliated or component Band government of such tribe that the Secretary of the Interior recognizes to be eligible for the special programs and services provided by the United States to Indians because of their status as Indians by annual notice in the **Federal Register** pursuant to the Federally Recognized Indian Tribe List Act of 1994 (Pub. L. 103–454, 108 Stat. 4791). The most recent annual notice (“Indian Entities Recognized and Eligible to Receive Services from the United States

Bureau of Indian Affairs”) was published in the **Federal Register** on April 4, 2008 (73 FR 18553). The Census Bureau is making this modification to clarify the process to be used to determine the tribal entities covered by the Bureau’s AIAN policy statement.

*(C) Section III—Policy Principles*

(i) Policy Principle No. 2 is renumbered as Policy Principle No. 4.

(ii) Under proposed Policy Principle No. 3, insert the words “and implementation” after the word “planning.” The principle is renumbered as Policy Principle No. 5 and now reads as follows:

5. “The Census Bureau recognizes and invites tribal governments involvement in the Census Bureau planning and implementation for censuses and surveys toward ensuring the most accurate counts and data for the AIAN population.”

(iii) Under proposed Policy Principle No. 4, at the beginning of the principle’s text—insert the following sentence:

“The Census Bureau acknowledges the trust relationship between the federal government and AIAN Tribes as established by specific statutes, treaties, court decisions, executive orders, regulations, and policies.” Proposed Policy Principle No. 4 is renumbered as Policy Principle No. 2 and now reads as follows:

2. “The Census Bureau acknowledges the trust relationship between the federal government and AIAN Tribes as established by specific statutes, treaties, court decisions, executive orders, regulations, and policies. The Census Bureau’s procedures for outreach, notice, and consultation will ensure involvement of AIAN tribal governments, to the extent practicable and permitted by law, before making decisions or implementing policies, rules, or programs that affect federally recognized governments.”

(iv) Proposed Policy Principle No. 5 is renumbered as Policy Principle No. 6.

(v) Under proposed Policy Principle No. 6, insert the words “tribal protocols” after the word “distinct” and insert the word “values” after the word “cultural.” Proposed Policy Principle No. 6 is renumbered as Policy Principle No. 7 and now reads as follows:

7. “The Census Bureau recognizes that there are distinct tribal protocols, cultural values, practices, religious beliefs, traditions, climate conditions, as well as a tribe’s authority over its land areas that must be considered and abided by when conducting any census survey in AIAN areas.”

(vi) Proposed Policy Principle No. 7 is renumbered as Policy Principle No. 8.

(vii) Under proposed Policy Principle No. 8, insert the phrase “living in AIAN areas” after the word “resident.” Proposed Policy Principle No. 8 is renumbered as Policy Principle No. 9 and now reads as follows:

9. “The Census Bureau acknowledges its responsibility to provide accurate demographic and economic data on AIAN populations and their businesses. The Census Bureau will work with tribal governments and other partners to encourage the participation of every resident living in AIAN areas.

(viii) Under proposed Policy Principle No. 9:

(a) Insert the words “and work” after the word “consult.”

(b) Add the phrase “and throughout the planning and implementation of policy, rules or” after the word “decisions.”

(c) Renumber this Policy Principle as Policy Principle No. 3. This principle now reads as follows:

3. “The Census Bureau will consult and work with AIAN tribal governments before making decisions and throughout the planning and implementation of policy, rules, or programs that may affect tribes to ensure that tribal rights and concerns are addressed. Consultation will provide, but is not limited to, mutually agreed-upon protocols for timely communication, coordination, cooperation, and collaboration.”

**American Indian and Alaska Native Policy of the U.S. Census Bureau**

*Introduction*

The U.S. Census Bureau hereby proclaims its American Indian and Alaska Native (AIAN) policy. This Policy outlines the principles to be followed in all Census Bureau interactions with federally recognized AIAN tribal governments. It reaffirms the unique government-to-government relationship that exists between AIAN tribal governments and the Census Bureau.

This relationship is based on the United States Constitution, federal treaties, policy, law, court decisions, executive orders, and the ongoing political relationship among tribes and the Federal Government. The relationship results in a federal trust responsibility to federally recognized tribal governments.

The foundation for this policy statement is the White House Memorandum of September 23, 2004, “Government-to-Government Relations with Native American Tribal Governments” and the AIAN policy of the U.S. Department of Commerce of

March 30, 1995. This policy is for internal management only and does not grant or vest any right to any party in respect to any federal action not otherwise granted or vested by existing law or regulations.

*Definitions*

*Federally Recognized Indian Tribe:* Any AIAN, Band, Nation, Pueblo, or other organized group or community, including any Alaska Native village, as defined or established pursuant to the Alaska Native Claims Settlement Act (Title 43, United States Code (U.S.C.), Chapter 33, Section 1601 *et seq.*), acknowledged by the Federal Government to constitute a tribe with a government-to-government relationship with the United States and eligible for the programs, services, and other relationships established by the United States for indigenous people because of their political and legal status as AIAN tribes, Bands, Nations, Pueblos, or communities.

*American Indian and Alaska Native Tribal Government:* The recognized government of an Indian tribe and any affiliated or component Band government of such tribe that the Secretary of the Interior recognizes to be eligible for the special programs and services provided by the United States to Indians because of their status as Indians by annual notice in the **Federal Register** pursuant to the Federally Recognized Indian Tribe List Act of 1994 (Pub. L. 103–454, 108 Stat. 4791). The most recent annual notice (“Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs”) was published in the **Federal Register** on April 4, 2008 (73 FR 18553).

*Policy Principles*

The following policy statements provide general guidelines to Census Bureau employees for actions dealing with AIAN governments.

(1) The Census Bureau recognizes the unique government-to-government relationship between the United States and federally recognized AIAN tribal governments, as affirmed by the September 23, 2004, White House Memorandum for the Heads of Executive Departments and Agencies and the AIAN policy of the DOC.

(2) The Census Bureau acknowledges the trust relationship between the federal government and AIAN tribes as established by specific statutes, treaties, court decisions, executive orders, regulation, and policies. The Census Bureau’s procedures for outreach, notice, and consultation will ensure involvement of AIAN tribal

governments, to the extent practicable and permitted by law, before making decisions or implementing policies, rules, or programs that affect federally recognized tribal governments.

(3) The Census Bureau will consult and work with AIAN tribal governments before making decisions and throughout the planning and implementation of policy, rules, or programs that may affect tribes to ensure that tribal rights and concerns are addressed. Consultation will provide for, but is not limited to, mutually agreed-upon protocols for timely communication, coordination, cooperation, and collaboration.

(4) The Census Bureau recognizes each tribal government as a functioning governing body that the Census Bureau will work with to count and collect data, as accurately as possible, of all residents living in AIAN areas.

(5) The Census Bureau recognizes and invites tribal governments' involvement in the Census Bureau planning and implementation for censuses and surveys toward ensuring the most accurate counts and data for the AIAN population.

(6) The Census Bureau will continue its partnerships with tribal governments to enhance awareness of all censuses, surveys, and geography programs, particularly those including residents living in AIAN areas.

(7) The Census Bureau recognizes that there are distinct tribal protocols, cultural values, practices, religious beliefs, traditions, and climate conditions, as well as a tribe's authority over its land areas, that must be considered and abided by when conducting any census or survey in AIAN areas.

(8) The Census Bureau recognizes the importance of effective and efficient coordination with other federal agencies in the planning process of any census or survey that will include AIAN tribal governments.

(9) The Census Bureau acknowledges its responsibility to provide accurate demographic and economic data on AIAN populations and their businesses. The Census Bureau will work with tribal governments and other partners to encourage the participation of every resident living in AIAN areas.

Therefore, the Director of the Census Bureau hereby directs all directorates and their components (divisions, branches, and offices) to implement this policy by incorporating all of the above principles in their interactions with federally recognized AIAN tribal governments.

#### Executive Order 12866

This Notice has been determined to be not significant under Executive Order 12866.

Dated: October 21, 2008.

**Steve H. Murdock,**

*Director, Bureau of the Census.*

[FR Doc. E8-25848 Filed 10-29-08; 8:45 am]

**BILLING CODE 3510-07-P**

#### DEPARTMENT OF COMMERCE

##### Foreign-Trade Zones Board

[Docket 54-2008]

##### Foreign-Trade Zone 38 – Spartanburg, South Carolina

##### Application for Subzone Status adidas Sales, Inc.

##### (Athletic Footwear and Apparel Distribution)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the South Carolina State Ports Authority, grantee of FTZ 38, requesting special-purpose subzone status for the footwear and apparel warehousing and distribution facility of adidas Sales, Inc. (adidas), located in Spartanburg, South Carolina. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on October 20, 2008.

The adidas facility (1,959,293 sq. ft. /251 acres, 1,300 employees) is located at 685 Cedar Crest Road, Spartanburg, South Carolina. The facility is used for warehousing and distribution of foreign- origin apparel for the U.S. market and export. FTZ procedures would be utilized to support adidas' U.S.-based distribution activity. Finished apparel products to be admitted to the proposed subzone for distribution would include men's, boys', women's and girls' shoes, coats, suits, blouses, shirts, tops, jumpers, underwear, hosiery, pajamas, athletic wear, scarves, shawls, mufflers, gloves/ mittens, and infants' apparel. Certain textile fabrics (wool, cotton, man-made fiber) would also be distributed from the proposed subzone. Additional products that would be admitted to the proposed subzone for distribution are umbrellas, various instruments, sporting goods, sunglasses, cameras, jewelry, plates, leather goods, boxes, cases and paints. All foreign-origin apparel and textile products that are subject to quotas will be admitted to the proposed subzone under privileged foreign status (19 CFR

§ 146.41) or domestic (duty paid) status (19 CFR § 146.43). The applicant is not seeking manufacturing or processing authority with this request.

FTZ procedures would exempt adidas from customs duty payments on foreign products that are re-exported (about 2% of shipments). On domestic sales, duty payments would be deferred until the foreign merchandise is shipped from the facility and entered for U.S. consumption. Certain logistical/supply chain management savings would also be realized through subzone status. The application indicates that the savings from FTZ procedures would help improve the facility's international competitiveness.

In accordance with the Board's regulations, Claudia Hausler of the FTZ Staff is designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is December 29, 2008. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to January 13, 2009.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations: Greenville U.S. Department of Commerce Export Assistance Center, Buck Mickel Center at Greenville Technical College, 216 S. Pleasantburg Drive, Suite 243, Greenville, South Carolina; and, Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230-0002. For further information, contact Claudia Hausler at Claudia\_Hausler@ita.doc.gov, or (202) 482-1379.

Dated: October 22, 2008.

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. E8-25950 Filed 10-29-08; 8:45 am]

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