

CDC/ATSDR TRIBAL CONSULTATION POLICY

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1. PURPOSE

This document establishes policy and guidance regarding consultation between the Centers for Disease Control and Prevention (CDC¹) and the Agency for Toxic Substances and Disease Registry (CDC/ATSDR) and Indian Tribes.

CDC and Indian Tribes share the goal of establishing clear policies that further the government-to-government relationship between the U.S. Federal Government and Indian Tribes. True and effective consultation shall result in information exchange, mutual understanding, and informed decision-making on behalf of the Tribal governments and the Federal Government. The importance of consultation with Indian Tribes was affirmed through Presidential Memoranda in 1994, 2004 and 2009, and Executive Order (EO) 13175 in 2000.

The goal of this policy includes, but is not limited to, assisting in eliminating the health disparities faced by Indian Tribes, ensuring that access to critical health and human services and public health services is maximized to advance or enhance the social, physical, and economic status of Indians; and promoting health equity for all Indian people and communities. To achieve these shared goals, it is essential that Indian Tribal governments and CDC/ATSDR engage in open, continuous, and meaningful consultation.

The U.S. Department of Health and Human Services (HHS) Tribal Consultation Policy requires that all operating divisions of the department develop and implement Tribal consultation policies that are in compliance with the HHS Tribal Consultation Policy, effective December 14, 2010.

¹ References to CDC also include the Agency for Toxic Substances and Disease Registry (ATSDR).

2. BACKGROUND

Founded in 1946, CDC is the leading public health agency in the United States. The CDC collaborates with stakeholders and partners to develop expertise, information, and tools to promote healthy people and communicates through health promotion, prevention of disease, injury and disability, and preparedness for new and emerging health threats. CDC seeks to accomplish its mission by working with partners to monitor health, detect and investigate health problems, conduct research to enhance prevention, develop and advocate sound public health policies, implement prevention strategies, promote healthy behaviors, foster safe and healthful environments, and provide leadership and training. These functions are the backbone of CDC's mission. Each CDC Center, Institute, and Office (CIO) undertakes these activities to conduct CDC's specific programs. The steps that are needed to accomplish this mission are based on scientific excellence and require well-trained public health practitioners and leaders dedicated to high standards of quality and ethical practice.

CDC shares its focus on health protection with its sister agency ATSDR. First organized in 1985, ATSDR was created by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, more commonly known as the Superfund law. In 1986, Congress passed the Superfund Amendments and Reauthorization Act (SARA). The agency's mission is to serve the public through responsive public health actions to promote healthy and safe environments and prevent harmful exposures.

A. INTRODUCTION

Tribal consultation between CDC and Indian Tribes is built on two core principles, which are summarized below. Each of these principles supports the unique circumstances for who is engaged, why the engagement is significant, and guidance for how to engage. This relationship is derived from the unique political and legal relationship that Indian Tribes have with the Federal Government and is not based on race or ethnicity.

- **Tribal Sovereignty:** Since the formation of the Union, the United States has recognized Indian Tribes as sovereign nations. As sovereign nations, Indian Tribes exercise inherent sovereign powers over their members, territory, and lands. CDC recognizes that each Indian Tribe sets its own priorities and goals, including those that establish a safe and healthy environment for its members and territory.
- **Government-to-Government Relationship:** 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, Supreme Court decisions, and Executive Orders that establish and define a Federal 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. CDC/ATSDR is committed to continuing to work with Federally recognized Tribal

governments on a government-to-government basis and strongly supports and respects Tribal sovereignty and self-determination in the United States.

This special relationship between the Federal Government and Indian Tribes is affirmed in statutes and various Presidential Executive Orders including, but not limited to the following:

- Older Americans Act, P.L. 89-73, as amended;
- Indian Self-Determination and Education Assistance Act, P.L. 93-638, as amended;
- Native American Programs Act, P.L. 93-644, as amended;
- Indian Health Care Improvement Act, P.L. 94-437, as amended;
- Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L.104-193;
- Presidential Executive Memorandum to the Heads of Executive Departments dated April 29, 1994;
- Presidential Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, November 6, 2000;
- Presidential Memorandum, Government-to-Government Relationship with Tribal Governments, September 23, 2004;
- Presidential Memorandum, Tribal Consultation, November 5, 2009;
- American Recovery and Reinvestment Act of 2009, P.L. 111-5, 123 Stat. 115 (Feb. 17, 2009);
- Children's Health Insurance Program Reauthorization Act of 2009, P.L. 111-3, 123 Stat. 8 (Feb. 4, 2009);
- Patient Protection and Affordable Care Act of 2010, P.L. 111-148, 124 Stat. 119 (Mar. 23, 2010).

As a Federal Government entity, CDC/ATSDR will comply, to the extent practicable and permitted by law, with all provisions in the HHS Tribal Consultation Policy to ensure meaningful consultation and timely input from Indian Tribes before actions are taken that will significantly affect Indian Tribes.

B. PHILOSOPHY

Indian Tribes have an inalienable and inherent right to self-government. Self-government means government in which decisions are made by the people who are most directly affected by the decisions. As sovereign nations, Indian Tribes exercise inherent sovereign powers over their members, territory, and lands. As a Federal organization, CDC recognizes its special commitment and unique relationship with Indian Tribes and is committed to fulfilling their critical role in promoting the health and safety of Indian Tribes.

3. POLICY

CDC policy on Tribal consultation will adhere to all provisions in the HHS Tribal Consultation Policy as revised on December 14, 2010.

CDC will honor the sovereignty of Indian Tribal governments, respect the inherent rights of Indian Tribal self-governance and continue to work on a government-to-government basis. Government-to-government consultation will be conducted with elected Indian Tribal Leaders or their designated representatives, to the extent practicable and permitted by law, before any action is taken that will significantly affect Indian Tribe(s).

CDC will employ a process to ensure meaningful and timely input by CDC/ATSDR and Indian Tribes in the development of policies that have Tribal implications. This Tribal consultation policy does not waive any Tribal governmental rights, including treaty rights, sovereign immunities or jurisdiction; and nothing in this policy waives the U.S. Federal Government's deliberative process privilege. Nothing in this policy may be interpreted as diminishing or eliminating the rights of American Indians or Alaska Natives (AI/ANs) or entities under U.S. Federal law, contained in treaties, agreements and other constructive arrangements.

A. TRIBAL CONSULTATION PROCESS

An effective consultation between CDC and Indian Tribes requires information exchange, mutual understanding, full and equitable participation, building and maintaining trust between all parties, which is an indispensable element in establishing an effective consultative relationship. CDC will adhere to the consultation process as outlined in Section 8 of the HHS Tribal Consultation Policy. Upon identification of an action (policy, funding/budget development, and program services, functions, and activities) significantly affecting Indian Tribes, CDC will initiate consultation regarding the event through communication methods as outlined in the HHS Tribal Consultation Policy.

B. BUDGET FORMULATION

HHS conducts annual Department-wide Tribal budget and policy consultation sessions to give Indian Tribes the opportunity to present their budget recommendations to the Department to ensure Tribal priorities are addressed. CDC will comply with Section 11 on Budget Formulation of the HHS Tribal Consultation Policy.

C. PERFORMANCE MEASURES AND ACCOUNTABILITY

CDC will utilize the HHS and CDC Tribal Consultation Policies to address CDC's missions and performance objectives with respect to: assisting in eliminating the health disparities faced by Indian Tribes; ensuring that access to critical health and human services and public health services is maximized to advance or enhance the social, physical, and economic status of Indians; and helping promote health equity for all

Indian people and communities. CDC/ATSDR will measure and report results and outcomes of the Tribal consultation performance and will follow the goals and objectives of the seated Secretary and Administration according to Section 12 on Tribal Consultation Performance and Accountability in the HHS Tribal Consultation Policy.

D. EVALUATION AND REPORTING

The consultation process and activities conducted according to the policy should result in meaningful outcomes for CDC and for the affected Indian Tribes. To effectively evaluate the results of consultation activity and CDC's ability to incorporate Indian Tribes' consultation input, CDC will measure the level of satisfaction of Indian Tribes on an annual basis as outlined in Sections 12 (Tribal Consultation Performance and Accountability) and Section 13 (Evaluation, Recording of Meetings, and Reporting) of the HHS Tribal Consultation Policy.

E. CONFLICT RESOLUTION

The intent of this policy is to promote partnerships with Indian Tribes that enhance CDC's ability to address issues, needs and problem resolution. CDC shall consult with Indian Tribes to establish a clearly defined conflict resolution process under which Indian Tribes bring forward concerns that have a substantial direct effect. However, Indian Tribes and CDC/ATSDR may not always agree, and inherent in the government-to-government relationship, Indian Tribes may elevate an issue of importance to a higher or separate decision-making authority.

Nothing in this Policy creates a right of action against the CDC/ATSDR or the Department of Health and Human Services for failure to comply with this Policy.

F. TRIBAL WAIVER

CDC will fully comply with Section 15 of the HHS Tribal Consultation Policy on Tribal waivers, and process all requests routinely received for waivers under existing program authorities with the statutorily set timeframes.

G. EFFECTIVE DATE

This policy is effective on the date of the signature by the CDC Director/ATSDR Administrator.

This policy updates the Tribal Consultation Policy signed on October 18, 2005 and it applies to all CDC CIOs.

4. RESPONSIBILITIES

A. CONSULTATION PARTICIPANTS AND ROLES

The government-to-government relationship between the U.S. and Federally recognized Indian Tribes dictates that the principal focus for consultation by CDC is with Indian Tribes, individually or collectively. Consultation parties include:

- Indian Tribes represented by the Tribal President, Tribal Chair, or Tribal Governor, or an elected or appointed Tribal Leader, or their authorized representative(s)
- CDC Director, ATSDR Administrator, CDC Deputy Director for State, Tribal, Local and Territorial Support, or their designee(s)

CDC/ATSDR may gather information from Indian organizations in accordance with the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, or with the “Unfunded Mandates Reform Act Exemption” to FACA found in the Unfunded Mandates Reform Act, P.L. 104-4, Section 204. The government does not participate in government-to-government consultation with these entities; rather the government communicates with these organizations in the interests of Indian Tribes and Indian People. CDC may also communicate with Native-serving organizations, including urban and rural Indian organizations, in the interests of Indian communities and Indian people. Government-to-government consultation at CDC will occur as outlined in the HHS Tribal Consultation Policy.

B. ROLE OF CDC/ATSDR OFFICE OF THE DIRECTOR (OD), TRIBAL SUPPORT

The CDC Office of the Director, through the Deputy Director for State, Tribal, Local and Territorial Support will designate the Tribal Support Unit with the responsibility for implementation, coordination and agency-wide adherence to CDC/ATSDR and HHS Tribal Consultation Policies.

C. ROLE OF CDC/ATSDR TRIBAL ADVISORY COMMITTEE (TAC)

The TAC serves as an advisory committee to CDC/ATSDR providing input, guidance, and advice on policies, guidelines, and programmatic issues affecting the health of Indian Tribe(s). The TAC will either comply with the requirements of the FACA, 5 U.S.C. App. 2, or with the “Unfunded Mandates Reform Act Exemption” to FACA found in the Unfunded Mandates Reform Act, P.L. 104-4, Section 204.

D. CONSULTATION PROCEDURES AND RESPONSIBILITIES

The CDC Tribal consultative process shall consist of direct communications with Indian Tribes and Indian organizations as applicable, in various ways as provided in Section 9 on Consultation Procedures and Responsibilities of the HHS Tribal Consultation Policy.

5. REFERENCES

A. Department Tribal Consultation Policy, U.S. Department of Health and Human Services, August 18, 2011. <http://www.hhs.gov/intergovernmental/tribal/tcp.html>

B. Memorandum for the Heads of Executive Departments and Agencies, Government-to-Government Relationship with Tribal Governments, Presidential Memorandum, September 23, 2004. <http://www.whitehouse.gov/news/releases/2004/09/20040923-4.html>

C. Consultation and Coordination with Indian Tribal Governments, Executive Order 13175, November 6, 2000. <http://www.epa.gov/fedrgstr/eo/eo13175.htm>

6. ACRONYMS

AIAN- American Indian and Alaska Native

ATSDR - Agency for Toxic Substances and Disease Registry

CDC - Centers for Disease Control and Prevention

CERCLA - Comprehensive Environmental Response, Compensation, and Liability Act

CIO - Centers, Institutes and Offices

EO - Executive Order

HHS - U.S. Department of Health and Human Services

OD - Office of the Director

SARA - Superfund Amendments and Reauthorization Act

U.S. - United States

USC - United States Code

7. DEFINITIONS

Agency – Any authority of the United States that is an “agency” under 44 USC 3502(1) other than those considered to be independent regulatory agencies, as defined in 44 USC 3502 (5).

Communication – The exchange of ideas, messages, or information, by speech, signals, writing, or other means.

Consultation – An enhanced form of communication, which emphasizes trust, respect and shared responsibility. It is an open and free exchange of information and opinion among parties, which leads to mutual understanding and comprehension. 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.

Deliberative Process Privilege – Is a privilege exempting the government from disclosure of government agency materials containing opinions, recommendations, and other communications that are part of the decision-making process within the agency.

Executive Order – An order issued by the Government’s executive on the basis of authority specifically granted to the executive branch (as by the U.S. Constitution or a Congressional Act).

Federally Recognized Tribal governments – Indian Tribes with whom the Federal Government maintains an official government-to-government relationship; usually established by a Federal treaty, statute, executive order, court order, or a Federal Administrative Action. The Bureau of Indian Affairs (BIA) maintains and regularly publishes the list of Federally recognized Indian Tribes.

Indian – Indian means a person who is a member of an Indian tribe as defined in 25 U.S.C. 479a. Throughout this policy, Indian is synonymous with American Indian or Alaska Native.

Indian Organizations – 1) Those Federally recognized Tribally constituted entities that have been designated by their governing body to facilitate HHS communications and consultation activities. 2) Any regional or national organizations whose board is comprised of Federally recognized Indian Tribes and elected/appointed Tribal leaders. The government does not participate in government-to-government consultation with these entities; rather these organizations represent the interests of Tribes when authorized by those Tribes.

Indian Tribe – An Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

Policies with Tribal Implications – Refers to regulations, statutes, legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, 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.

Self-Government – Government in which the people who are most directly affected by the decisions make decisions.

Sovereignty – The ultimate source of political power from which all specific political powers are derived.

Treaty – A legally binding and written agreement that affirms the government-to-government relationship between two or more nations.

Tribal Government – An American Indian or Alaska Native Tribe, Band, Nation, Pueblo, Village or Community that the Secretary of the Interior acknowledges to exist as an Indian Tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 USC 479a.

Tribal Officials – Elected or duly appointed officials of Indian Tribes or authorized inter-Tribal organizations.

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.

Tribal Self-Governance – The governmental actions of Indian Tribes exercising self-government and self-determination.