

## **CDC/ATSDR TRIBAL CONSULTATION POLICY**

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### **I. PURPOSE**

This document establishes the Centers for Disease Control and Prevention (CDC) and Agency for Toxic Substances and Disease Registry (ATSDR)<sup>[1]</sup> policy on consultation with American Indian and Alaska Native (AI/AN) governments and tribal leaders and provides guidance for working effectively with AI/AN communities and organizations and enhancing AI/AN access to CDC programs.

Within the Department of Health and Human Services (HHS), each of the eleven operating divisions (OPDIVs) share in the department-wide responsibility to coordinate, communicate, and consult with tribal governments on issues that affect these governments. HHS policy requires that all operating divisions (or agencies) develop and implement agency-specific tribal consultation policies that are in compliance with the HHS Tribal Consultation Policy (see Section XI, A).

Per HHS guidelines, CDC's Tribal Consultation Policy will be responsive to changes that may occur over time within CDC programs or within our AI/AN constituency. This policy is intended to be dynamic and may be updated or modified as circumstances and tribal leaders' input indicate.

### **II. ABBREVIATIONS, ACRONYMS, AND DEFINITIONS**

A. For the purposes of this policy, the following abbreviations and acronyms apply:

1. AI/AN - American Indian and Alaska Native

2. CAMICC - CDC/ATSDR Minority Initiatives Coordinating Committee
3. CC/CO - coordinating centers and coordinating offices
4. FACA - Federal Advisory Committee Act
5. FMO - Financial Management Office
6. HHS - Department of Health and Human Services
7. ICNAA - Intradepartmental Council on Native American Affairs
8. NCEH - National Center for Environmental Health
9. OD - Office of the Director, CDC
10. OMHD - Office of Minority Health and Health Disparities
11. OPDIV - operating division
12. TCAC - Tribal Consultation Advisory Committee

B. For the purposes of this policy, the following definitions apply:

1. Consultation – An enhanced form of communication that emphasizes trust, respect, and shared responsibility. It is an open and free exchange of information and opinion among parties that leads to mutual understanding and comprehension. Consultation is integral to a deliberative process that results in effective collaboration and informed decision making with the ultimate goal of reaching consensus on issues.
2. Deliberative process privilege – 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.
3. 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.
4. Indian country - In the context of this document, refers to all AI/AN communities and populations within the United States, inclusive of reservations, trust lands, and urban AI/AN groups.
5. Indian organization – Any group, association, partnership, corporation, or legal entity owned or controlled by Indians, or a majority whose members are Indians.
6. Indian tribe – Any Indian tribe, band, nation or other organized group or community including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians (25 U.S.C. Sec 450b).
7. Intradepartmental Council on Native American Affairs (ICNAA) – Authorized by the Native American Programs Act of 1974 (NAPA), as amended. The ICNAA serves primarily to perform functions and develop recommendations for short-, intermediate-, or long-term solutions to improve AI/AN policies and programs as well as provide recommendations on how HHS should be organized to administer services to the AI/AN population.
8. Policies that have tribal implications – Refers to regulations, 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.

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

10. Senior tribal liaisons – staff within the CDC OD designated by the CDC Director who are knowledgeable about the agency’s programs and budgets, have ready access to senior program leadership, and are empowered to speak on behalf of the agency for AI/AN programs, services, issues, and concerns.

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

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

13. 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.

14. Tribal officials – Elected or duly appointed officials of Indian tribes or authorized inter-tribal organizations.

15. Tribal organization – The recognized governing body of any Indian tribe; any legally established organization of American Indians and Alaska Natives that is controlled, sanctioned, or chartered by such governing body or that is democratically elected by the adult members of the community to be served by such organization and that includes the maximum participation of Indian tribe members in all phases of its activities (25 U.S.C. 450b).

16. Tribal resolution – A formal expression of the opinion or will of an official tribal governing body, which is adopted by vote of the tribal governing body.

17. Tribal self-governance – The governmental actions of tribes exercising self government and self-determination.

18. Urban Indian Organization – A program that is funded by the Indian Health Service under Title V (Section 502 or 513) of the Indian Health Care Improvement Act.

### **III. PHILOSOPHY**

American Indian and Alaska Native tribes have an inalienable and inherent right to self-governance. Self-governance means government in which decisions are made by the people who are most directly affected by the decisions. As sovereign nations, AI/AN tribes exercise inherent sovereign powers over their members, territory, and lands. As a federal agency, CDC recognizes its special obligations to, and unique relationship with, the AI/AN population, and is committed to fulfilling its critical role in assuring that AI/AN communities are safer and healthier.

### **IV. INTRODUCTION**

In the United States, American Indians and Alaska Natives have a unique political and legal status that distinguishes them from traditionally defined minority and other population groups. This unique relationship between the federal government and AI/AN tribes is based upon the Constitution of the United States, treaties, statutes, Executive Orders, Presidential Memoranda, and court decisions. An integral element of this government-to-government relationship is that consultation occur with AI/AN tribes on issues that impact them, and that tribes participate in the decision making process afforded in a government-to-government relationship. The importance of consultations with AI/AN leaders was reaffirmed through Presidential Memoranda in 1994 and 2004 and Executive Orders in 1997 and 2000.

AI/AN governments, organizations, and communities share with HHS the goals of eliminating the health disparities faced by AI/AN people, assuring that their access to critical healthcare and public health services is maximized, and achieving health equity for all AI/AN people and communities. To achieve these shared goals, it is essential that AI/AN representatives and the HHS OPDIVs engage in open, continuous, and meaningful consultation. CDC abides by the concept that consultation is “an enhanced form of communication that emphasizes trust, respect and shared responsibility. It is an open and free exchange of information and opinion among parties that leads to mutual understanding and comprehension. Consultation is integral to a deliberative process that results in effective collaboration and informed decision-making.”

## **V. BACKGROUND**

Since the formation of the union, the United States has recognized AI/AN governments as sovereign nations. The federal government has enacted numerous statutes and promulgated numerous regulations that establish and define a trust relationship with AI/AN people. Our nation, under the law of the United States, has recognized the right of AI/AN people to self-government. Tribal governments exercise inherent sovereign powers over their members and territory. The United States continues to work with tribes on a government-to-government basis to address issues concerning self-governance, trust resources, treaty, and other rights.

As reaffirmed by Executive Order No. 13175, November 6, 2000, and the Presidential Memorandum of September 23, 2004 (see Section XI, B and C), the United States government maintains a unique relationship with AI/AN governments, communities, organizations, and individuals. Based upon Article I, Section 8, of the United States Constitution, in addition to numerous treaties, acts of legislation, Supreme Court decisions, and Executive Orders, the U.S. government must relate to federally recognized tribes on a government-to-government basis and must consult with AI/AN representatives on matters that may affect their communities. The implementation of this policy is in recognition of this special relationship.

Inherent to this relationship is the federal trust responsibility, which, in part, includes an obligation to ensure that all AI/AN individuals attain the highest health status possible. Trust responsibility has been defined as “. . . the United States government’s moral obligation as defined in treaties. This responsibility is for the United States to honor its obligations, as agreed

to in treaties, to represent the best interests of tribes and their members.” In 1977, the American Indian Policy Review Commission concluded:

The purpose behind the trust doctrine is and always has been to ensure the survival and welfare of Indian tribes and people. This includes an obligation to provide those services required to protect and enhance Indian lands, resources, and self-government, and also includes those economic and social programs, which are necessary to raise the standard of living and social well being of Indian people to a level comparable to the non-Indian society.” (American Indian Policy Review Commission, 1977, Final Report, Washington, D.C.: GPO, p. 130)<sup>[2]</sup>

## VI. POLICY

As an OPDIV within HHS, CDC’s policy on tribal consultation will adhere to all provisions in the HHS Tribal Consultation Policy as revised in January 2005.

CDC will honor the sovereignty of American Indian/Alaska Native governments, respect the inherent rights of self governance, commit to work on a government-to-government basis, and uphold the federal trust responsibility. Government-to-government consultation will be conducted with elected tribal officials or their designated representatives. The CDC will also confer with tribal and Alaska Native organizations and AI/AN urban and rural communities before taking actions and/or making decisions that affect them. Consultation will include affected AI/AN governments and appropriate AI/AN organizations.

Although the federal-tribal government-to-government relationship encompasses federally recognized tribes, other statutes and policies exist that allow for consultation with non-federally recognized tribes and other AI/AN organizations that, by the nature of their business, serve AI/AN people and might be negatively affected if excluded from the consultation process. In cases where the government-to-government relationship does not exist, as with programs in urban areas established to serve AI/ANs, state-recognized tribal groups, and other AI/AN organizations, HHS policy dictates that consultation take place to the extent that there is not a conflict-of-interest in stated federal statutes or authorizing language. However, if CDC wants to include organizations that do not represent a specific federally recognized tribal government on advisory committees or work groups, then Federal Advisory Committee Act (FACA) requirements must be followed.

This tribal consultation policy does not waive any tribal governmental rights, including treaty rights, sovereign immunities or jurisdiction; and nothing in the policy creates a right of action against CDC or HHS for failure to comply with the policy. Nothing in this policy waives the government’s deliberative process privilege.

This policy and any subsequent updates will be posted at <http://www.cdc.gov/omh>.

## VII. RESPONSIBILITIES

A. Responsibilities of the Office of the Director, CDC, with regard to CDC and HHS tribal consultation policies.

The Office of the Director, CDC, through the Office of Minority Health and Health Disparities (OMHD), Office of Strategy and Innovation, will be responsible for ensuring agency-wide adherence to CDC and HHS tribal consultation policies. Official CDC points of contact for tribal issues will be the CDC senior tribal liaisons, who will also serve as liaison-members to the ICNAA. Official points of contact for ATSDR will be the Director, NCEH/ATSDR, and the ATSDR tribal liaison(s), who will also serve as the liaison member (s) to ICNAA. Government-to-government consultation at CDC will occur as outlined in the procedures below. Procedures and supporting activities for which OD/CDC has primary responsibility include, but are not limited to, the following:

- Biannual tribal consultation sessions.
- Establishment of the CDC Tribal Consultation Advisory Committee.
- Participation in HHS-sponsored annual regional tribal consultation sessions (hosted by HHS Regional Offices) and the annual HHS tribal budget consultation session in Washington, D.C.
  - Meetings between the CDC Director (or his or her designee) and elected tribal leaders (or their designees).
  - Letters, e-mails, and publications from the CDC Director (or his or her designee) exchanged with elected tribal leaders or their designees.

Official OD/CDC points-of-contact for tribal issues (senior tribal liaisons) will receive and disseminate information from, or about, these procedures to CDC CC/CO and centers through the CDC/ATSDR Minority Initiatives Coordinating Committee described below. OD/CDC will also be responsible for conflict resolution and monitoring tribal consultation activities, including developing and utilizing a critical evaluation process to ensure consistency with the objectives of the HHS Tribal Consultation Policy. In addition, comprehensive information on AI/AN activities and budget allocations across CDC is collected annually by OD/CDC (OMHD and FMO) to prepare an annual CDC tribal consultation and budget report for submission to HHS.

B. Responsibility of the CDC Minority Initiatives Coordinating Committee with regard to CDC and HHS tribal consultation policies.

CAMICC was charged by the CDC Director to help integrate CDC's agency-wide activities relative to minority health, which includes assisting OMHD and the senior tribal liaisons in the coordination of activities that target AI/AN tribes, communities, and organizations. CAMICC, which meets monthly, is composed of CC/CO and center'<sup>[3]</sup> senior staff representatives designated by CC/CO and center directors. The Director of OMHD provides general oversight and guidance. Co-chairs are elected from among CC/

CO representatives. CAMICC representatives are knowledgeable about CC/CO programs and budgets, have ready access to CC/CO leadership, and will help to ensure that CC/CO leadership is well-informed about AI/AN health issues. In addition, CAMICC representatives are responsible for providing the information needed to compile CDC's annual report to HHS on tribal consultation activities and budget allocations. The ATSDR CAMICC representative will coordinate efforts with the ATSDR tribal liaison(s).

C. Responsibilities of the coordinating centers and coordinating offices with regard to CDC and HHS tribal consultation policies.

Unless otherwise specified, the CAMICC representative will serve as the CC/CO liaison to OD/CDC for AI/AN programs, activities, and health issues. CC/CO directors are ultimately responsible for their respective centers compliance with this policy. CAMICC representatives are responsible for:

- Monitoring CC/CO compliance with the procedures outlined in this policy.
- Advising CC/CO directors regarding tribal consultation procedures.
- Maintaining timely information flow to and from OD/CDC on AI/AN issues.
- Participating in TCAC meetings on behalf of their respective CC/CO.
- Supporting agency-wide consultation efforts.

Through their respective CAMICC representatives (see Section X,A), all CC/CO staff are responsible for keeping the senior tribal liaisons informed of all CC/CO activities involving AI/AN populations.

Although formal responsibility for the agency's overall government-to-government consultation activities rests within OD/CDC, CC/CO and center leadership should actively participate in TCAC meetings and HHS-sponsored regional and national tribal consultation sessions as frequently as possible. CDC CC/COs and centers are responsible for adhering to the procedures in Section VIII of this document regarding:

- Consultation at the CC/CO and center level.
- Working effectively with AI/AN communities.
- Enhancing tribal access to CDC programs.

## VIII. PROCEDURES

CDC tribal consultation procedures will maximize both tribal and CDC staff participation. CDC will provide tribal leaders, or their designees, with a number of opportunities to interact with CDC staff and leadership. Each opportunity will complement, and not supplant, the others. Key components of CDC's consultation procedures will be biannual tribal consultation sessions, the CDC TCAC, and CDC participation in annual HHS national and regional tribal consultation sessions.

Official government-to-government tribal consultation activities at CDC may also occur whenever the CDC Director, or his/her designee, meets with a tribal or Alaska Native President/Chair/Governor, any elected/appointed AI/AN leader, or an AI/AN representative designated by an elected or appointed AI/AN leader to discuss issues concerning either party. Such meetings may be held at the request of either CDC or tribal leaders, and both parties must concur that the meeting constitutes formal consultation. As warranted, CDC will also use direct mailings (e.g., "Dear Tribal Leader" letters), electronic distribution (e-mail and web site postings), and other mechanisms to inform tribal leaders of meeting outcomes, health issues, or CDC activities that may affect tribal communities.

Consultation activities at the CC/CO and center level will occur through a number of different mechanisms and venues that offer flexibility for both CDC staff and AI/AN stakeholders. Consultation activities at this level will emphasize obtaining a balance of persons with specific subject matter expertise and perspectives pertaining to the topic at hand.

#### A. CDC biannual tribal consultation sessions

Each year, CDC will invite all elected tribal leaders, or their designees, to attend two CDC tribal consultation sessions -- one in Atlanta hosted by CDC (spring) and one in a second location hosted by regional tribal health boards (prior to the end of the calendar year). The TCAC (described in part Section VIII, B. below) will assist in the planning and coordination of each consultation session. CDC staff will ensure that all consultation sessions and recommended actions are formally recorded and made available to tribal governments. Once the consultation session is complete, all recommended follow-up actions will be tracked within CDC, and actions based on these recommendations will be reported to tribes in a timely manner. Consultation session summaries will be made available to tribal leaders and other AI/AN stakeholders in both print and electronic formats, including website postings. CDC CC/CO and center leadership, CAMICC representatives, and other staff, as appropriate, will participate in the biannual CDC tribal consultation sessions.

#### B. CDC Tribal Consultation Advisory Committee<sup>[4]</sup>

The purpose of the CDC TCAC is to provide a complementary venue wherein tribal representatives and CDC staff will exchange information about public health issues in Indian country, identify urgent public health needs in AI/AN communities, and discuss collaborative approaches to addressing these issues and needs. The TCAC will support, and not supplant, any other government-to-government consultation activities that CDC undertakes. In addition to assisting CDC in the planning and coordination of biannual tribal consultation sessions, the TCAC will provide an established, recurring venue wherein tribal leaders will advise CDC regarding the government-to-government consultation process and will help to ensure that CDC activities or policies that impact Indian country are brought to the attention of all tribal leaders. At any time, any tribal leader may attend TCAC meetings or, if unavailable to attend, may ask TCAC members to present issues on their

behalf. As noted above, tribal leaders' input and opportunities for consultation are not limited to TCAC meetings or biannual tribal consultation sessions.

The TCAC will be composed of 15 individuals that are either elected officials of tribal governments or their designees with authority to act on their behalf. TCAC membership will include representation from each of 12 traditional regions in Indian country – a geographically organized system originally based on the Indian Health Service's Area Office structure (Alaska Area, Portland Area, California Area, Billings Area, Phoenix Area, Tucson Area, Navajo Area, Albuquerque Area, Aberdeen Area, Bemidji Area, Oklahoma Area, and Nashville Area). Each area or region has a tribally run "health board" or similar coalition of tribal leaders from which TCAC membership may be drawn. Tribal leaders may choose how their TCAC representatives are selected from each region but should institute clear procedures as to how these representatives will keep their constituents informed of TCAC activities. In addition, the TCAC will have representatives of national tribal organizations that have been designated by tribal leaders to act on their behalf. TCAC membership should reflect balanced representation of tribes' self-governance and direct service interests.

TCAC meetings will also provide opportunities for information exchange with non-federally recognized tribes, urban Indian organizations, or other AI/AN organizations. Such opportunities will be separate from the formal government-to-government consultation sessions, and representatives of these organizations who are not elected tribal leaders or their designees may not be TCAC members.

TCAC meetings will occur in conjunction with formal tribal consultation sessions twice each year. TCAC conference calls will be held as needed and additional meetings may be scheduled depending on need and availability of funds.

The TCAC membership will develop its own internal structure, rules of order, and by-laws, including rules for rotation of membership. The chairperson will be an elected tribal leader (or designee); the executive secretary will be designated by OMHD. The Executive Secretary and staff will assure that all TCAC meetings and recommended actions are formally recorded and made available to tribal governments. Recommended follow-up actions will be implemented and tracked within CDC and reported to tribes in a timely manner. TCAC meeting summaries will be made available to tribal leaders and other AI/AN stakeholders in both print and electronic formats, including web site postings. CDC CC/CO and center leadership, CAMICC representatives, and other staff, as appropriate, will participate in TCAC biannual meetings.

### C. Participation in annual HHS national and regional tribal consultation sessions

Each year, HHS hosts the annual HHS tribal budget consultation sessions in Washington, D.C. In addition to elected tribal leaders and other AI/AN representatives from across the country, these sessions are attended by representatives from HHS staff

divisions and OPDIVs. At least two representatives from CDC will participate in these annual sessions. CDC CC/CO and center leadership and staff are also encouraged to attend.

Also annually, nine of the ten HHS Regional Offices hosts a regional tribal consultation session for tribes and AI/AN organizations within their respective regions. Regional consultation sessions have been developed by HHS as a systematic method to regularly consult with tribal leaders on HHS programs at field locations. CDC is committed to using these regional consultation sessions to facilitate tribal input into CDC programs and the budget formulation process. Because all tribal leaders in a given HHS region are invited to these regional sessions, CDC places high priority on its participation. At least one representative from CDC/OD will annually attend each of these regional sessions. CDC CC/CO leadership and staff are also encouraged to attend.

#### D. CDC budget formulation

The fall CDC tribal consultation session and TCAC meeting will focus on budget matters. At this meeting, CDC staff will provide a review of CDC's resource commitments to AI/AN programs during the previous fiscal year and will hear tribal leaders' input regarding the next budget formulation cycle.

CDC supports HHS efforts to involve tribal leaders in the annual HHS budget formulation process and the expectation that all OPDIVs will participate in the National Divisional Tribal Budget Formulation and Consultation Session to take place in Washington, D.C., no later than March 15th each year. CDC will send at least two representatives to this annual meeting. CDC will also rely on input obtained during the HHS regional tribal consultation sessions to help inform its budget formulation process as it relates to AI/AN communities.

CDC is committed to appropriate disclosure of budget information. Annually, CDC will submit to HHS and tribal leaders an annual tribal budget and consultation report that includes a summary of CDC resources committed to programs that benefit AI/AN communities. This information will be displayed relative to CC/CO resource commitments and by defined categories. The latter will include a summary of grants and cooperative agreements awarded directly to tribes and tribal organizations.

#### E. Consultation at the CDC CC/CO and center level

Consultation at the CC/CO and center level will promote the principle that each CC/CO and center bears responsibility for addressing AI/AN public health needs within the context of their respective missions. Each CC/CO and center should follow the guidance below in terms of key components of effective tribal consultation. Effective implementation of these components will ensure consistency across the agency and help to enhance collaboration among CC/CO and centers around tribal issues.

## Key components of effective tribal consultation:

- Understanding when to consult.
- Knowing with whom to consult, and how to ensure appropriate and sufficient tribal representation.
- Engaging tribal representatives as meeting co-chairs and following their guidance on venues, format, and cultural protocol.
- Involving, at tribal leaders' discretion, state health department representatives whenever possible and appropriate.
- Documenting meetings or other forms of consultation accurately and completely.
- Providing timely feedback to tribal consultation participants and the communities they represent.

### 1. When to consult:

CC/CO and centers are expected to confer with appropriate AI/AN representatives on matters that include, but are not limited to, the topics below. CC/CO and center staff should seek guidance from CDC senior tribal liaisons whenever tribal consultation is being considered, or whenever there is a question as to whether or not consultation is needed. The following list represents a minimum threshold for consultation:

- Formulation of new program announcements (grants, cooperative agreements) primarily intended to benefit AI/AN populations.
- Notices of proposed rule making that have tribal implications.
- Establishment of new public health programs targeting AI/AN.
- Development of policies or guidelines that have tribal implications or will primarily or substantially affect AI/AN populations.
- EpiAid deployments involving AI reservations or trust lands, AN villages, or urban AI/AN populations, or to investigate outbreaks in non-tribal areas, but involving AI/AN people.
- Research proposals involving AI/AN persons or communities.
- Development of training and educational opportunities for AI/AN health professionals, or future health professionals.
- Negotiations with state and local health officials on matters affecting AI/AN populations within, or adjacent to, their public health jurisdictions.

### 2. With whom to consult:

Consultation activities at this level will emphasize obtaining a balance of persons with specific subject matter expertise and perspectives pertaining to the topics and populations involved. Appropriate AI/AN representation will rest primarily with tribal leaders but may also include some combination of tribal leaders, tribal public health

officials, and subject matter experts – many of whom may be drawn from regional tribal health boards, national tribal health organizations, and tribal epidemiology centers. Determining sufficiency of AI/AN representation will vary depending upon a number of factors such as the scope of proposed activities (e.g., local, regional, or national; short term versus long term), the cultural or political sensitivity of the issue at hand, whether the proposed activities are research or public health practice, and the number of potential stakeholders (e.g., tribal communities, IHS, Bureau of Indian Affairs, state/local health departments, academic institutions, etc.) In general, proposed activities that are national in scope, involve sensitive issues, include research, or encompass numerous stakeholders would warrant broader AI/AN representation during consultation sessions or meetings. To help ensure consistency in making these determinations across CDC, CC/CO and center staff should seek guidance from their respective CAMICC representatives, the senior tribal liaisons, and the TCAC. CDC CC/COs and centers will always have the option of presenting proposals to the TCAC. National Indian health organizations (e.g., National Indian Health Board, National Council of Urban Indian Health), regional tribal health boards and coalitions, and colleagues within IHS will also be helpful resources for identifying appropriate AI/AN representatives (see Section X).

### 3. How to consult:

When convening meetings, CC/CO and center staff are encouraged to engage the appropriate tribal representatives as meeting co-chairs and to follow their guidance on venues, format, and cultural protocol. Procedurally, conferring with AI/AN representatives may take place in a manner that is both cost- and time-efficient, and logistically reasonable. In some instances, the solicitation of written input via electronic or traditional mail may be most appropriate. Tele- and video-conferencing are also encouraged, but in many cases face-to-face meetings should be the first option. For the latter, a round table set-up is suggested. For meetings and teleconferences, CDC policy does not dictate a minimum number of participants, meeting duration or location, or frequency – such details are left up to the individual CC/CO and center as long as they are conducted in a manner that is consistent with the tenets laid out in this procedural guidance. Timeliness, however, is critical, and adequate advance notice should be provided; meeting notices will be sent one to three months in advance, whenever possible. Any meetings or discussions should, if possible, take place well in advance of the event or implementation of the program under consideration. Meetings convened for the purpose of obtaining consensus advice may be subject to the FACA, unless they are established consistent with the consultation exemption previously referenced.

### 4. Involvement of state health departments:

HHS Tribal Consultation Policy calls for HHS agencies “to assist states in developing mechanisms for consultation with tribal governments and native populations before taking any actions that affect tribal governments and Native people. States will

receive assistance in developing state plan assurances for the delivery of services to tribal governments and Native people. State consultation with tribal governments shall be done in a meaningful manner that is consistent with the definition of ‘consultation’ as defined in this policy. HHS will assist Native populations in accessing services and resources that are available to them through HHS funding to states.” HHS policy also directs agencies to “. . . remove any procedural impediment to working directly with tribal governments or Indian people. . . .”

Whenever possible, CC/CO and center staff are expected to facilitate communication and partnerships between state/county/local health departments and their appropriate tribal counterparts (usually a tribal division of health or regional tribal health board) and, if appropriate, the regional tribal epidemiology center. Tribal governments maintain the right to accept or decline this type of assistance.

Each CC/CO and center should institutionalize an orientation and training process for project officers assigned to awardees of CDC-funded projects in states with identifiable AI/AN communities or populations (e.g., reservations, tribal trust lands, urban Indian communities). Project officer responsibility in such cases includes ensuring appropriate benefit to AI/AN populations from CDC funds awarded to states.

Documentation of this benefit should be included in awardees’ reports required under cooperative agreements. Further, if tribal populations are included as justification in a state’s grant application, states must provide documentation that tribes were involved in the development of that application and will be involved in the proposal’s implementation. Also included in this responsibility is an overall effort to help serve as a “bridge” between states and AI/AN governments and organizations and to inform state colleagues about federal protocol for working with AI/AN communities, about concerns expressed, and about approaches suggested by the CDC TCAC. Collaboration with organizations representing state health departments is encouraged.

#### 5. Documentation and accountability:

Meetings or conferences should be appropriately documented, with summaries copied to participants, the appropriate CAMICC representatives, and the CDC senior tribal liaisons. The latter are responsible for maintaining an inventory of CDC-wide tribal consultation and other AI/AN CC/CO and center program activities. This documentation helps to ensure accountability and is compiled annually in a report to HHS that is made readily available to AI/AN constituents. At a minimum, appropriate documentation includes a list of participants, with affiliations and contact information; a summary of proceedings; and a statement of meeting outcomes that includes action items, timelines, and responsible parties.

#### 6. Providing timely feedback:

A final key component of effective tribal consultation is the assurance of timely feedback. Tribal participants in consultation activities will have review/clearance privileges for the documentation procedures noted above. CDC CC/CO and center staff will work with tribal representatives to ensure that AI/AN communities are kept well-informed of the outcomes whenever tribal input is sought by CDC CC/CO and centers.

## F. Working effectively with AI/AN communities

### 1. Initial contact and approvals:

In all cases, respect for tribal sovereignty, community individuality, and cultural diversity must be maintained. CDC CC/CO and center staff must also adhere to protocol for contact with AI/AN community members on tribal lands. In most cases, this will require obtaining permissions from AI/AN community leaders and other AI/AN stakeholders prior to contact with AI/AN community members. Assistance for identifying such contacts is available through national tribal health organizations, regional tribal health boards, and tribal epidemiology centers (see Section X, B and E.) For reservations and other land-based tribes, initial contact is often with the tribal health director; in Alaska, this contact will likely be the medical director or CEO of the appropriate Native health corporation. These initial points of contact will then guide CDC CC/CO and center staff through any procedures needed for tribal council or Alaska Native village approvals. In some cases, tribal internal review board reviews and approvals, or formal tribal resolutions, may also be necessary. Because CDC CC/CO and center activities in Indian country often involve Indian Health Service (IHS) staff and facilities, it is important that IHS colleagues be contacted early in the process (see Section X, F and G).

### 2. Providing timely feedback:

As it is with tribal consultation, timely feedback is a critical component of working effectively with AI/AN communities at the CC/CO and center implementation level. It is the policy of CDC that any AI/AN community that collaborates in the implementation of CDC projects or programs will be provided with timely, culturally appropriate, and meaningful feedback regarding the progress or outcomes of those programs. In this context, "timely" means at least biannual progress reports on on-going projects; reports to communities on completed projects should occur within 6 months of project completion. Reports to communities should be provided in the form of on-site, oral presentations with consideration of the educational background and public health experience of the audience.

### 3. Ensuring access to CDC CC/CO and centers and their programs:

A critical CDC outcome of effective tribal consultation will be increased access to CDC CC/CO and center programs. CDC works with AI/AN partners and stakeholders to

enhance public health services in AI/AN communities through various mechanisms, including grants and cooperative agreements; federal intra-agency agreements; training; technical assistance; and direct assistance. Tribal requests for training, technical assistance, or direct assistance should be directed to the appropriate CDC points of contact for consideration and response. For extramural funding purposes (grants and cooperative agreements), CDC CC/CO and center staff should facilitate AI/AN participation through the use of standardized language in CDC program announcements unless precluded by current statutory structure. In general, CDC defines “eligibility” as:

The status an entity must possess to be considered for a grant. Authorizing legislation and programmatic regulations specify eligibility for individual grant programs and eligibility may be further restricted for programmatic reasons. In general, assistance is provided to nonprofit organizations, including faith-based and community-based entities, State and local governments, their agencies, Indian Tribes or tribal organizations, and occasionally to individuals. For-profit organizations are eligible to receive awards under financial assistance programs unless specifically excluded by legislation.

In this context, the phrase “Indian tribes” encompasses tribal governments and communities, tribal coalitions, tribal health boards and health departments and Alaska Native health corporations. Unless precluded by authorizing language, single eligibility approval, or similar contingencies, specification for tribal eligibility should be included in all CDC program announcements. As of October 2005, all CDC program announcements will be posted at <http://www.grants.gov>.

For grant and cooperative agreement applications responsive to AI/AN-focused program announcements, CDC will seek objective review panel members who are knowledgeable about working with tribal governments and AI/AN communities.

## G. Conflict resolution

An intent of this policy is to provide increased ability to solve problems. At the request of any tribal leader or CDC staff member, unresolved issues or concerns will be addressed as a high priority agenda item during the next regularly scheduled meeting of the TCAC. If the concern warrants more immediate attention, the party (or parties) involved may submit a written request to the chairperson or executive secretary, TCAC, for an interim meeting or teleconference. At their discretion, the chairperson and executive secretary may appoint a conflict resolution subcommittee from among the membership to arbitrate and issue a binding decision. As indicated, parties involved may also seek the services of CDC’s Alternative Dispute Resolution and Conflict Prevention Program (<http://www.cdc.gov/od/adr/about.htm> ). Appeals or unresolved issues thereafter will be referred to the HHS Office of Intergovernmental Affairs for arbitration. CDC will seek an equitable balance of tribal

and federal representatives in any arbitration.

#### H. Performance measures

Effective tribal consultation should serve to enhance tribal access to CDC programs. Annually, OMHD and FMO will collect and analyze data from across the agency about ongoing AI/AN activities, including a specific assessment of CDC resources allocated to serve AI/ANs and an inventory of new programs and policies affecting AI/AN communities. These analyses will allow for year-to-year tracking and comparisons of CDC's overall efforts to respond to tribal consultation and to implement programs and procedures that benefit AI/AN communities. A summary of these analyses and all consultation activities will be included as part of the CDC Annual Tribal Consultation and Budget Report submitted to IGA within 90 days of the end of each fiscal year, and it will be posted on the OMHD website (<http://www.cdc.gov/omh>).

#### I. Evaluation

The consultation process should lead to a meaningful, outcome-oriented exchange of information that is viewed as useful by both tribal constituents and CDC participants. Each CDC tribal consultation session, TCAC meeting, or other meetings that constitute consultation shall include an evaluation component comprised of a written survey provided to participants at the end of each session or meeting. Using these surveys as data collection tools, CDC will measure, on an annual basis, the overall level of satisfaction with the consultation process. The level of satisfaction assessment will also include participants' evaluations of CDC responsiveness to tribal input, achievement of intended results, and provision of status or outcome information to tribal participants.

Upon completion of a consultation session, CDC will determine if there are any unresolved issues that warrant further discussion or greater involvement of AI/AN participants in the implementation or evaluation of a given program or project. Once the consultation process is complete and a policy, budget, or programmatic decision is final, any implemented follow-up actions will be tracked within CDC and reported to tribal leaders in a timely manner.

## **IX. ATSDR SUPPLEMENTAL INFORMATION**

### Treatment of Indian tribes under CERCLA

ATSDR's mission is to prevent exposure and adverse human health effects and diminished quality of life associated with exposure to hazardous substances from waste sites, unplanned releases, and other sources of pollution present in the environment.

ATSDR is committed to assisting tribal governments in meeting the environmental health needs of their people related to exposures to hazardous substances. ATSDR continues to work to

improve its communication and cooperation with tribes. Section 126 of the Comprehensive Environmental Response Compensation, and Liability Act of 1980 (CERCLA or Superfund) provides that “[t]he governing body of an Indian tribe shall be afforded substantially the same treatment as a state with respect to the provisions of... section 104(i)...” Section 104(i) sets out ATSDR’s health-related authorities under CERCLA. In carrying out its activities under 104(i), ATSDR is directed to cooperate with states and therefore, tribal governments, and may carry out its activities through grants and cooperative agreements with tribal governments.

Hazardous waste sites and releases are found on tribal property or otherwise affecting Indian populations. ATSDR’s site-specific work requires extensive collaboration with relevant state and local health authorities including tribal governments across the nation. ATSDR’s work also involves intensive community involvement at hazardous waste sites and in the communities that may be impacted. Where these populations include Native American populations, communities, and reservations, ATSDR must appropriately engage and consult with the tribal governments and communities.

Consultations between ATSDR and tribal governments will continue to ensure effective collaboration in identifying, addressing, and satisfying the needs of tribal communities potentially affected by hazardous substances. Consultation enables ATSDR staff and tribal members to interactively participate, exchange recommendations, and provide input on environmental health activities. ATSDR supports a process with tribal nations and their members to work together to address tribal environmental public health needs, mutual trust, respect, and shared responsibilities between all participating parties, and open communication of information and opinions leading to mutual interaction and understanding. In carrying out these functions consistent with the HHS and CDC/ATSDR policies, ATSDR will:

- Respect and honor the sovereignty of the tribes, the responsibilities and rights to self-governance, and the differences between tribal nations and individuals.
- Consult with tribal governments to ensure that community concerns and impacts are carefully considered before the agency takes actions or makes decisions affecting tribal communities.
- Maintain government-to-government relationships with tribal governments.
- Ensure ongoing communication with tribal governments, communities, and individual tribal members to define concerns about possible health impacts from exposures to hazardous substances.

## **X. ADDITIONAL RESOURCES**

- A. [CDC/ATSDR Minority Initiatives Coordinating Committee \(CAMICC\) representatives.](http://www.cdc.gov/omh/CAMICC/CAMICCReps.htm)  
<http://www.cdc.gov/omh/CAMICC/CAMICCReps.htm>
- B. National Indian Health Board – [Mission](#) and [Points-of-Contact](#).

<http://www.nihb.org/staticpages/index.php?page=200403301344377815>  
<http://www.nihb.org/staticpages/index.php?page=200403301344374968>

- C. [Regional Tribal Health Boards.](#)  
<http://www.cdc.gov/omh/Populations/AIAN/AIANHB.htm>
- D. [Tribal Epidemiology Centers.](#)  
<http://www.cdc.gov/omh/Populations/AIAN/AIANEpiCntrs.htm>
- E. [National Council of Urban Indian Health.](#)  
<http://www.ncuih.org/>
- F. [IHS Division of Epidemiology.](#)  
<http://www.ihs.gov/MedicalPrograms/Epi/index.asp>
- G. [IHS National Council of Clinical Directors.](#)  
<http://www.ihs.gov/NonMedicalPrograms/nccd/>
- H. CDC Regional Tribal Consultation Sessions – Executive Summaries (Ten summaries – all available on request from OMHD).
- I. [CDC Draft Tribal Consultation Plan. In: HHS report, Consultation with American Indians and Alaska Natives, A Report on the Continuing Dialogue Between the Department of Health and Human Services and American Indian and Alaska Native Leaders, January 2001.](#)  
[http://www.ihs.gov/PublicInfo/PublicAffairs/PressReleases/Press\\_Release\\_2001/Consultation\\_Report\\_2001/Consultation\\_Report\\_2001\\_ALL.pdf](http://www.ihs.gov/PublicInfo/PublicAffairs/PressReleases/Press_Release_2001/Consultation_Report_2001/Consultation_Report_2001_ALL.pdf)
- J. [Collective Summary of Tribal Leaders' Recommendations to CDC.](#)  
<http://aops-mas-iis.od.cdc.gov/policy/Doc/policy851.htm>

## XI. REFERENCES

- A. [Department Tribal Consultation Policy, U.S. Department Of Health And Human Services, January 14, 2005.](#)  
<http://www.hhs.gov/ofta/docs/FnlCnsltPlcywl.pdf>
- 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)

<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)

<http://www.epa.gov/fedrgstr/eo/eo13175.htm>

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[1]

The Agency for Toxic Substances and Disease Registry (ATSDR) is an operating division of the United States Department of Health and Human Services. The CDC Director is also the ATSDR Administrator. ATSDR was created by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended by the Superfund Amendments and Reauthorization Act. The agency is mandated to perform specific functions concerning the effect on public health of hazardous substances in the environment. These functions include public health assessments of waste sites, health consultations concerning specific hazardous substances, health surveillance and registries, response to emergency releases of hazardous substances, applied research in support of public health assessments, information development and dissemination, and education and training concerning hazardous substances.

ATSDR and CDC share the goal of protecting public health by addressing environmental threats and promoting a healthy relationship between people and their environment. By having a combined Tribal Consultation Policy, CDC/ATSDR is able to strengthen public health science, practice, and managerial functions to address the on-going needs of tribal communities. The administrative and management consolidation of ATSDR and CDC's National Center for Environmental Health (NCEH) preserves ATSDR's status as an independent agency as authorized by CERCLA. However, this consolidation aligns the organizations to better serve the public's environmental health needs. Thus, greater focus and attention will be given to tribal consultation for necessary input into each agency's products and services. In this document, the term "CDC" refers to both ATSDR and CDC.

[2]

Poupart J, et al. To Build a Bridge – Working with American Indian Communities. 2001, American Indian Policy Center, St. Paul, MN. [www.airpi.org](http://www.airpi.org)

[3]

For ease of reference within policy documents, "center" will refer collectively to CDC's national centers, institute, the National Immunization Program, the Office of Genomics and Disease Prevention.

[4]

[Section 204, "State, Local, and Tribal Government Input," of Title II of P.L. 104-4 \(Unfunded Mandates Reform Act of 1995\), provides an exemption from the Federal Advisory Committee Act \(5 U.S.C. App.\) for intergovernmental consultations.](#)