



ADMINISTRATIVE POLICY NO. 7.01


SUBJECT: American Indian Policy

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AUTHORIZING SOURCES: Washington State 1989 Centennial Accord
President's Executive Order #13175
Office of the Secretary

EFFECTIVE DATE: November 1, 1987

REVISED: December 1, 2004

APPROVED BY: 
Chief Administrative Officer

SUNSET REVIEW DATE: December 1, 2006

BACKGROUND:

The Department of Social and Health Services (DSHS) follows a government-to-government approach to seek consultation and participation by representatives of tribal governments in policy development and service program activities. This is in compliance with the Washington State 1989 Centennial Accord and current federal Indian policy as outlined by Executive Order #13175 signed by President Clinton in November 2000, which promotes government-to-government relationships with American Indian Tribes.

PURPOSE:

This policy defines the Department's commitment to consultation with Federally Recognized Tribes of Washington State, Recognized American Indian Organizations, and individual American Indians and Alaska Natives in the planning of DSHS service programs, to ensure quality and comprehensive service delivery to all American Indians and Alaska Natives in Washington State.

SCOPE:

This policy applies to all DSHS programs and employees. DSHS administrators and regional program managers who oversee contracted services are also responsible for implementing this policy in the planning and delivery of contracted services.

DEFINITIONS:

Consultation: Consultation requires an enhanced form of communication that emphasizes trust and respect. It requires a shared responsibility that allows an open and free exchange of information and opinion among parties that leads to mutual understanding and comprehension.

Contracted Services: DSHS contracts with a large number of contractors to provide client services, personal services and purchased services. These contractors include individual providers, public agencies, and private (profit or non-profit) organizations. Among them are counties that receive contracts or grants to provide DSHS customers with alcohol and substance abuse treatment services, and counties that provide mental health services through Regional Support Networks. Other contracted agencies also provide licensing services, group care services, and other social and health services.

Culturally Relevant: This describes a condition where services provided to clients are appropriate according to the clients' cultural backgrounds.

Dispute Resolution: When issues cannot be resolved through consultation process alone, a dispute resolution process may be useful to resolve technical issues, policy choices, or to ensure that the parties' values have been given fair hearing and due consideration.

Federally Recognized Tribes: These are self-governing American Indian and Alaskan Native governments that are recognized under applicable federal and common law. Because of their unique sovereign status, Federally Recognized Tribes have the inherent power to make and enforce laws on their lands, and to create governmental entities.

Government-to-Government: This describes the relationships and protocols among and between Federally Recognized Tribes, and the federal, state, and other governments.

Indian Policy Advisory Committee (IPAC): This DSHS advisory committee is comprised of representatives from Federally Recognized Tribes of Washington State and the Recognized American Indian Organizations. It guides the implementation of the Centennial Accord and the DSHS American Indian Policy. The Office of Indian Policy and Support Services along with the Department tribal liaisons, provide technical support to IPAC in its ongoing communications through meeting, planning, and consultation activities. According to Article XI of the IPAC by-laws, IPAC does not have the authority or power to infringe or jeopardize the sovereignty of any Federally Recognized Tribe or non-member Tribe.

Key Identified Positions: These are DSHS managers and employees in regional or headquarters offices whose emphasis of responsibility is working in conjunction or association with the American Indian and Alaska Native Tribes. Employees in these key identified positions are required to attend the Administrative Policy 7.01 Training.

Office of Indian Policy and Support Services (IPSS): This office reports to the Secretary of DSHS and is responsible for coordinating efforts with Federally Recognized Tribes of Washington State and the Recognized American Indian Organizations in order to address the collective service needs of individual American Indians and Alaska Natives in Washington State.

Recognized American Indian Organizations: These organizations, as recognized in accordance to IPAC by-laws, include the American Indian Community Center (AICC), NATIVE Project, Seattle Indian Health Board (SIHB), Small Tribes of Western Washington (STOWW), United Indians of All Tribes Foundation (UIATF), and South Puget Intertribal Planning Agency (SPIPA), a tribal consortium. These organizations exercise their rights as American Indians and citizens of the United States and residents of the State of Washington.

Tribal Sovereignty: Federally Recognized Tribes are recognized in federal law as possessing sovereignty over their members and their territory. Sovereignty means that tribes have the legislative, executive, and judicial power to make and enforce laws, and to establish courts and other forums for resolution of disputes.

POLICY:

A. General Guidelines

1. DSHS shall provide necessary and appropriate social and health services to people of Federally Recognized Tribes of Washington State (Tribes) and Recognized American Indian Organizations (Indian Organizations) and American Indian and Alaska Native individuals.
2. DSHS recognizes, honors, and supports consultation with Tribes on a government-to-government basis, and with Indian Organizations.
3. In making policy on Indian issues, the Department shall acknowledge and consider:
 - a. The sovereignty of Federally Recognized Tribes.
 - b. The unique social/legal status of Federally Recognized Tribes under the Supremacy Clause and Indian Commerce Clause of the United States Constitution, federal treaties, executive orders, Indian Citizen's Act of 1924, Indian Child Welfare Act of 1978, the Centennial Accord, other relevant statutes, and federal and state court decisions.
 - c. American Indian self-determination and self-governance without the termination of the unique status of Federally Recognized Tribes.
 - d. Recognition of Federally Recognized tribal governments as political governing bodies of sovereign American Indian and Alaska Native tribes.
 - e. Cooperation and coordination with the Governor's Office of Indian Affairs.

- f. The opportunity for Federally Recognized Tribes' involvement and consultation in, but not limited to: the Department plans, budgets, policies, program services (including those provided by contractors and grantees), operational procedures, federal waivers or exemptions to state plans, that affect American Indian people.
4. DSHS shall ensure that programs and services to Tribes, Indian Organizations, and individual American Indian and Alaska Native are culturally relevant and in compliance with this policy.
5. DSHS shall conduct periodic evaluations of the responsibilities listed above to identify progress and outstanding issues.
6. DSHS shall explore the opportunity to develop a data collection process, in consultation with Tribes and Indian Organizations, to show statewide and tribal specific patterns of service use and access.
7. This policy does not waive, alter, or diminish the sovereignty of Federally Recognized Tribal governments: nor does it affect federal or tribal protected rights for Individual American Indians or Alaska Natives, or any other rights under the Centennial Accord, Treaty, Executive Order, self-determination, self-governance, or other applicable Federal, Tribal or State laws.
8. DSHS shall recognize the rights of Federally Recognized Tribes to bring their issues and needs to the direct attention of the Governor under the Centennial Accord at any time.
9. This policy defines specific duties and responsibilities for DSHS employees. This policy also provides opportunities for Tribes and Indian Organizations to participate "in part" or "in total" at their discretion. This policy is in full force and effect regardless of the degree of participation of any Tribe or Indian Organization. DSHS employees shall extend the full benefit of this policy even if a Tribe or Indian Organization decides not to participate.
10. Each Regional Administrator, Field Services Administrator, or Division Director shall develop and submit a biennial Policy 7.01 Implementation Plan to his or her Assistant Secretary by April 2nd of each even-numbered year before the beginning of the biennium, and submit the annual Progress Report by April 2nd of each odd-numbered year. Each Assistant Secretary shall submit the consolidated Implementation Plan for his or her administration to the Office of Indian Policy and Support Services (IPSS) by April 30th of each even-numbered year, and submit the administration's annual Progress Reports to IPSS by April 30th of each odd-numbered year. IPSS shall provide to the Cabinet an overview of each administration's Implementation Plan by June 30th of the same year.
11. The Policy 7.01 Implementation Plan and the annual Progress Report shall be developed in consultation and collaboration with the Tribes and Indian Organizations. A uniform matrix format shall be used for the purpose of performance measurements. See Attachment 1: Policy 7.01 Implementation Plan Reporting Guidelines.
12. DSHS managers with appointing authority shall include representatives from Tribes and Indian Organizations as part of employee interview panels for key identified positions.

B. Communications

1. The IPSS staff and regional managers shall maintain the information distribution list within their regions and provide information to the Tribes and Indian Organizations on a regular basis.
2. IPSS shall hold quarterly meetings with each Assistant Secretary to timely identify issues between DSHS and the Tribes and discuss strategies for addressing the issues.
3. The Assistant Secretaries shall update the Cabinet on tribal relations and the status of their Policy 7.01 Implementation Plans specific to each administration.
4. The IPSS staff shall hold quarterly meetings with all programs' liaisons/program managers identified by each administration to discuss collaboration and integration within DSHS with respect to tribal services.
5. IPSS shall schedule two Assistant Secretaries to attend each Indian Policy Advisory Committee (IPAC) meeting and discuss the planning for specific areas of partnership with the Tribes and Indian Organizations.

C. Consultation Process

1. Administrations of DSHS may initiate a consultation process with Tribes and also seek advice from IPAC at the same time. A detailed process and information is provided on page 12. *Attachment 2: DSHS Administrative Policy 7.01 Consultation Flowchart.*
2. Representatives from DSHS and Tribal government shall identify the participants in the two-way consultation process and establish participation at the appropriate level. Participants shall disclose any limitations on their ability to make decisions on behalf of the agency prior to consultation meetings.
3. Participants shall provide a clear description of the nature of the issues. Related documents or statements describing the purpose and issues shall be provided in advance to all consultation participants. Any sensitive information or legal limitations on or requirements for disclosure of information should be identified in advance.
4. Participants shall have sufficient time to review documents and respond to requests for consultation. The amount of time can vary depending on the nature and complexity of the issues. If decisions require quick actions due to imposed deadlines, every effort shall be made to provide written notice in advance to allow for meaningful input and response.
5. Participants shall establish and adhere to a schedule for consultation. DSHS and tribal participants shall jointly determine the protocols, timing and number of meetings needed for consultation.
6. Participants shall recognize that each Tribe is unique culturally and administratively. It is important to acknowledge tribal customary law or religious rules regarding issues of confidentiality.
7. Participants shall consider use of workgroups or task forces to develop recommendations on actions on various technical, legal or policy issues.

8. Participants shall report the outcomes of the consultation to the Tribes, Indian Organizations, DSHS Secretary, and appropriate administrations. With the goal to reach consensus as the outcome of the consultation, DSHS and tribal participants shall actively participate in the consultation so that all views can be considered. Once the consultation is completed and a policy decision is final, all recommended follow-up actions shall be communicated, implemented, and monitored. The issue and the solution shall be incorporated into the Policy 7.01 Implementation Plan including all related attachments for record purposes.

D. Dispute Resolution Process

1. In light of the sovereign government status of Tribes, when consultation alone has not been successful in resolving issues at the regional level, Tribes have the authority to raise the issues to the Assistant Secretary, Secretary, or the Governor.
2. Depending on the particular issues involved, DSHS shall select the most appropriate dispute resolution mechanism from the following: mediation, agreed fact-finding, arbitration, or litigation within agreed parameters. Participation in this process does not waive, alter, or otherwise diminish the rights of either party to seek other actions or remedies provided for by applicable tribal, federal, or state law.
3. In a formal arbitration process, a hearing panel shall be established to perform the following duties:
 - a. Notify the involved parties that a complaint has been filed.
 - b. Determine if the case is eligible for a hearing under this policy.
 - c. If the case is not eligible for a hearing, notify the involved parties that the case is not accepted and where the case shall be referred.
 - d. If the case is eligible for a hearing, notify the involved parties when a case is accepted and when a hearing will be scheduled.
 - e. Establish a time and place for a hearing, and notify the involved parties.
 - f. Conduct a hearing and keep a record of the proceedings.
 - g. Consider the facts presented by all involved parties and render a decision.
 - h. Notify the involved parties of the decision.
4. Through the arbitration process, the involved parties use their collective ability to resolve issues of mutual concern. No party waives any rights including but not limited to treaty rights and immunities, including sovereign immunity or jurisdiction.
5. In cases where agreements cannot be reached, each party is free to pursue its interests through any means that it deems appropriate, including litigation. No party waives any rights including but not limited to treaty rights and immunities, including sovereign immunity or jurisdiction. In the event of litigation, agreements to meet and confer before litigation is filed may help to ensure each party understands the positions and interests of the other parties, and may provide opportunities to discuss how to reduce the time and cost of litigation for all concerned.

E. Duties and Responsibilities

1. The Secretary of DSHS shall:
 - a. Communicate with each Tribe, Indian Organization, and IPAC, review their recommendations, and where appropriate, implement the recommendations within the realm of his or her authority, and provide periodic updates to the Governor’s Cabinet.
 - b. Consider seeking legislative support for Tribal and Indian Organization programs and services when submitting budget request to the Office of Financial Management (OFM) and submitting legislative proposals related to social and health services.
 - c. Support the federal model of “self-determination” and “self-governance” for tribal management of state funded programs while discussing relevant issues with OFM and the Governor’s Office.
 - d. Work with Tribes, Indian Organizations, and IPAC in assessing unmet needs, service gaps, and other outstanding issues, and address those issues within the realm of his/her authority.
 - e. Consult with Tribes, Indian Organizations and IPAC before making substantive changes to IPSS or the American Indian Policy.
 - f. Present the DSHS Policy 7.01 Progress Report each year to the: (1) IPAC members, Tribes and Indian Organizations, (2) the Governor’s Cabinet, and (3) DSHS Cabinet.

2. The Office of Indian Policy and Support Services (IPSS) shall:
 - a. Be responsible for the overall coordination, monitoring, and assessment of the department’s relationships with Tribes and Indian Organizations.
 - b. Facilitate DSHS communications and consultations on an ongoing basis with Tribes and Indian Organizations to ensure the department’s thorough consideration of all suggestions and recommendations.
 - c. Advocate for the delivery of DSHS services that are of high quality and culturally sensitive, and ensure that American Indian and Alaska Native children, families, and individuals can access DSHS services in a timely manner.
 - d. Communicate with DSHS management, regional representatives and contractors to assist them in understanding and implementing this policy.
 - e. Monitor issues on services to American Indians and Alaska Native, bring issues to the appropriate administrator for resolution, and recommend specific actions to resolve issues in compliance with this policy. IPSS staff are authorized to participate at any level of DSHS, and to access any
 - f. Provide staff support to IPAC for its ongoing communications through meeting, planning, and consultation activities.
 - g. Provide ongoing training and information on this policy to department and tribal staff.

- c. Appoint Tribal Liaisons and provide opportunities for tribal specific training and participation in meetings and conferences as funding permits. Tribal Liaisons will attend IPAC meetings and along with IPSS staff provide technical support or information to the IPAC members.
- d. Identify, measure and evaluate performance indicators of the Region related to the implementation of this policy.

Policy 7.01 Implementation Plan Reporting Guidelines

The Policy 7.01 Implementation Plans and the Annual Progress Reports shall be developed in consultation and collaboration with each Tribe and Indian Organization.

A. Reporting Schedule:

Each Regional Administrator or Field Services Administrator shall:

1. Develop and submit the biennial Policy 7.01 Implementation Plan to his or her Assistant Secretary by April 2nd of each even-numbered year for the following two fiscal years starting July 1. The purpose is to have a complete Implementation Plan ready to implement by July 1 of the next biennium.
2. Incorporate any amendments to the Policy 7.01 Implementation Plan as they are negotiated during the biennium, and immediately send the amendments to the Assistant Secretary.
3. Submit the first annual Progress Report to the Assistant Secretary by April 2nd of the next odd-numbered year.
4. Incorporate the second annual Progress Report into the next biennial Policy 7.01 Implementation Plan by April 2nd of the following even-numbered year, with the new goals, objectives or activities specifically noted.

Each Assistant Secretary shall:

1. Submit the consolidated biennial plan for his or her administration to IPSS by April 30th of each even-numbered year. The purpose is to have a complete Implementation Plan ready to implement by July 1 of the next biennium.
2. Upon receiving any amendments to the Policy 7.01 Implementation Plan from the Regional Administrator or Field Services Administrator, review and finalize the amendments, and submit to IPSS within 30 days of approval.
3. Submit the administration's first annual Progress Report to IPSS by April 30th of the next odd-numbered year.
4. Incorporate the second annual Progress Report into the next biennial Policy 7.01 Implementation Plan by April 30th of the following even-numbered year, with the new goals, objectives or activities specifically noted.

B. Planning Checklist

This checklist is provided to assist the assigned employees in key identified positions in developing the Implementation Plan. This exercise can help identify areas that need to be improved upon.

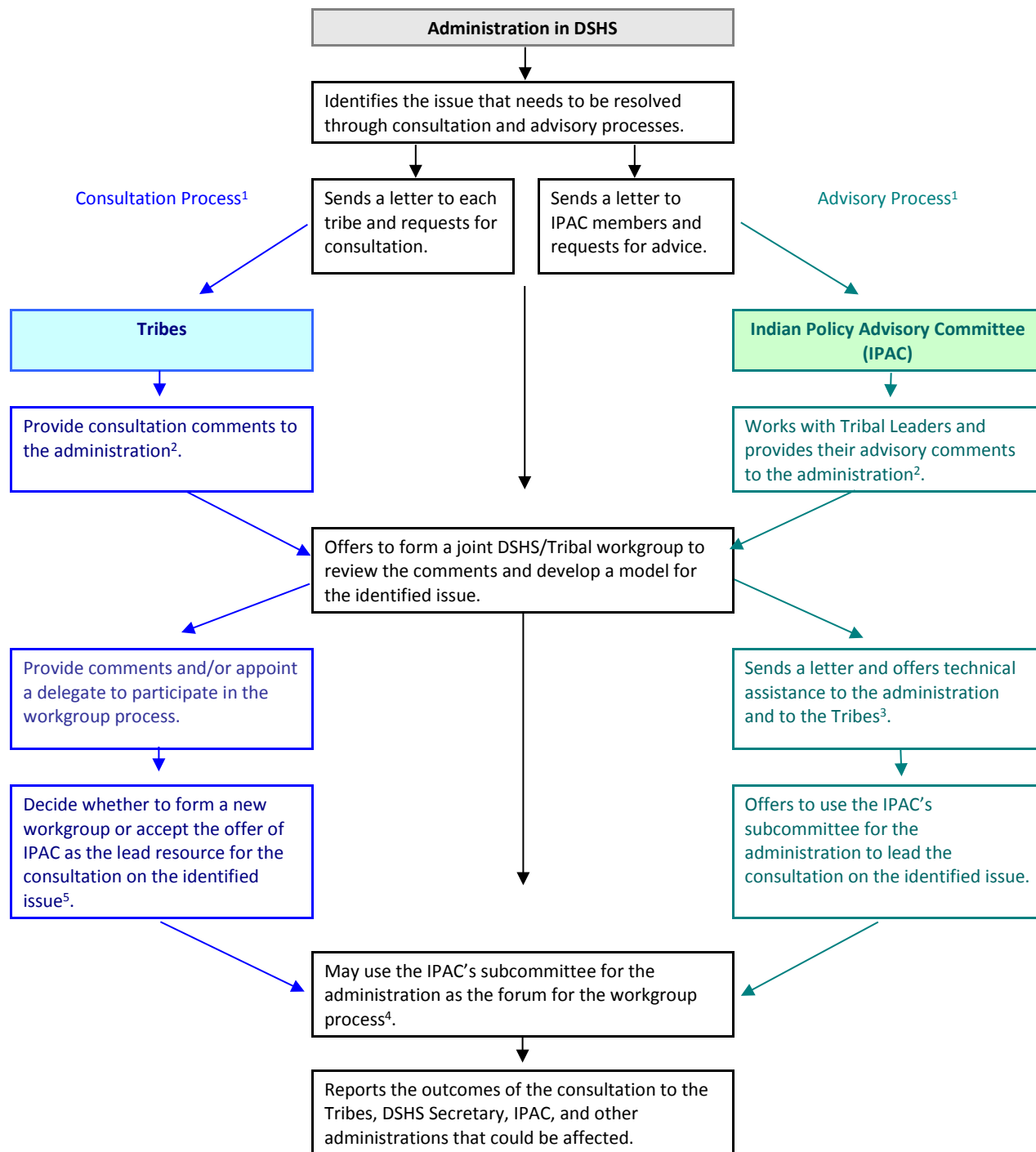
- 1. Have you scheduled regular meetings with the Tribes to discuss Policy 7.01 Implementation Plan and/or Progress Report? When and how often do you meet?
- 2. Have your Administration, Region, Division, Program, Contractors or Grantees met with the Tribes in your area and identified issues that need to be addressed? What were the topics of the issues? What were the agreeable solutions?
- 3. Have you included Tribal contacts in your information sharing, problem-solving and planning activities? Who are your contacts at the Tribe?
- 4. Have you notified Tribes of funding opportunities, RFP's, available grants, or training opportunities from DSHS? What were they?
- 5. Do you have any special/pilot projects that include tribal participation or need to have tribal participation? What are they?
- 6. Are your employees trained to address culturally sensitive issues or have access to culturally relevant resources?
- 7. Is your program/division able to respond to current needs of the tribes? How?
- 8. Did your program or division provide training to the Tribes? What tribes? What kind of training was provided?
- 9. Was technical assistance provided to the Tribes? If yes, in what capacity?
- 10. Do you have Local Area Agreements or current working agreements with the Tribes? What are they? Are they current?
- 11. Do you contract directly with the Tribes? What are these contracts?
- 12. Do you have a plan for recruiting Native American providers, contractors, or employees?
- 13. Did you inform and seek input from IPSS when developing policies and procedures that will have a unique effect on Tribes or Indian Organizations?
- 14. Do you have issues or concerns that require assistance from the Office of Indian Policy and Support Services (IPSS)? Have you discussed these issues with IPSS?

C. Format

The matrix below shall be used for both Implementation Plan and Progress Report starting no later than 2006.

Policy 7.01 Implementation Plan Biennium Timeframe: July 1, ____ to June 30, ____ Plan Due Dates: April 2 (Regional Plan submitted to Assistant Secretary) and April 30 (Assistant Secretary Plan submitted to IPSS) of each even-numbered year. Progress Report Due Dates: April 2 (Regional Plan submitted to Assistant Secretary) and April 30 (Assistant Secretary Plan submitted to IPSS) of each odd-numbered year.				
Implementation Plan				Progress Report
(1) Goals/Objectives	(2) Activities	(3) Expected Outcome	(4) Lead Staff and Target Date	(5) Status Update for the Fiscal Year Starting Last July 1

DSHS Administrative Policy 7.01 Consultation Flowchart



Footnotes:

- ¹ The “consultation” with Tribes can be occurring at the same time that IPAC is performing their “advisory” work.
- ² Sometimes it may be the same employee who provides the consultation comments on behalf of the Tribe and also prepares the advisory comments as an IPAC delegate.
- ³ The IPAC letter would also include a list of the current IPAC delegates and subcommittee members. This would make it easier for Tribal Leaders to identify people who are already working on the issues through IPAC.
- ⁴ Many Tribes have already designated delegates to IPAC, and the existing subcommittee could be the lead resource for Tribes to work on the joint DSHS/Tribal model development.
- ⁵ Some Tribes may prefer to use their existing IPAC delegates and work through the IPAC subcommittee rather than having duplicate meetings on the same issue.