

Re: Request for Information—Regulatory Reform on Artificial Intelligence

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I submit this comment in response to OSTP’s Request for Information on regulatory reform for artificial intelligence (AI). I write as a professor of economics at George Mason University and a senior fellow at the Mercatus Center. I study regulation and institutional design and engage with tribal leaders on economic development and public administration.

Summary

This comment proposes regulatory and guidance actions that agencies can implement without new legislation.¹ It focuses on a tribes-as-states parity, identity assurance, and targeted steps that reduce compliance costs and speed responsible AI adoption by tribal governments. It adopts a simple three-tiered data rule: (1) personal data protected by existing privacy law, (2) tribe-designated nonpublic cultural knowledge accessed by license, and (3) public information that remains open. For infrastructure, it favors “security by control”—customer-managed encryption keys, auditable access logs, and choice of on-prem, sovereign-enclave, or major-cloud hosting—rather than rigid data-location mandates.

Priority Reforms (Owner, Lever, Metric)

1. Tribes-as-states parity in AI governance (cross-cutting).

Set a default parity rule: When AI policy grants states discretion or streamlined pathways, tribes receive the same treatment unless a statute clearly provides otherwise. Update program manuals and grant guidance to reflect parity and to avoid routing everything through states.

¹ See Thomas Stratmann, “Unlocking Growth on Tribal Lands” (Mercatus Policy Spotlight, Mercatus Center at George Mason University, October 8, 2025), <https://www.mercatus.org/research/policy-spotlights/unlocking-growth-tribal-lands>.

Owner: OSTP and the Office of Management and Budget (OMB). **Lever:** policy memorandum and OMB guidance. **Metric:** number of programs with parity language; time to approval for tribal applications versus states.

2. Identity assurance using tribal systems (security, interoperability).

Recognize tribal identity providers that meet National Institute of Standards and Technology (NIST) digital-identity assurance standards and accept tribe-issued digital credentials for federal relying parties. Provide technical assistance so tribes can operate identity services that meet the specifications.

Owner: Department of Homeland Security (DHS) with NIST and Department of the Interior (DOI)/Bureau of Indian Affairs (BIA). **Lever:** DHS/NIST implementation guidance; DOI/BIA technical assistance. **Metric:** number of approved tribal identity providers; adoption by federal relying parties.

3. Programmatic primacy for tribal operations (cooperative-federalism parity).

For AI systems used by tribal governmental agencies and tribally controlled entities, federal programs should recognize tribal AI governance policies as the primary compliance framework in Indian Country, so long as those policies align with the NIST “AI Risk Management Framework”² and applicable federal privacy and security baselines. Agencies should update program manuals to avoid duplicative state requirements, accept tribal policy attestations in lieu of state signoffs, and use reciprocity checklists to speed approvals.

Owner: OMB and OSTP; DOI/BIA, Indian Health Service (IHS), Department of Justice (DOJ), Department of Housing and Urban Development (HUD)/Bureau of Indian Education. **Lever:** guidance and reciprocity checklist. **Metric:** approval time for tribal policies; number of programs that publish primacy or reciprocity language.

4. Paperwork Reduction Act fast-track for small tribal AI pilots (organizational factors; lack of clarity).

Create a categorical, time-limited fast-track under the Paperwork Reduction Act (PRA) for tribal AI pilots that use de-identified data and standard disclosures. Publish model consent and plain-language notices that tribes can adopt without legal drafting.

Owner: OMB. **Lever:** generic clearance and template notices. **Metric:** median PRA approval time for tribal pilots; number of pilots launched.

5. Security by control, not location—FedRAMP reciprocity with strong customer controls.

Create an expedited FedRAMP³ path for cloud AI services that are used by tribal governments and that must interoperate with federal systems. Require customer-managed encryption keys, auditable access logs, data portability, and residency options—such as on-premise, sovereign enclave, or major cloud—so tribes choose the model that fits risk and cost. Use shared security packages, authorization to operate (ATO) reciprocity, and short checklists sized for small agencies.

Owner: General Services Administration/FedRAMP with NIST. **Lever:** FedRAMP baseline and reciprocity bulletin; control checklist. **Metric:** number of tribal ATOs using reciprocity; days from

² National Institute of Standards and Technology, “AI Risk Management Framework,” January 26, 2023, <https://www.nist.gov/itl/ai-risk-management-framework>.

³ FedRamp, accessed October 27, 2025, <https://www.fedramp.gov/>.

submission to authorization; percent using customer-managed key (CMK)/bring-your-own key (BYOK).

6. Clarify grant and procurement rules for AI-as-a-Service (regulatory mismatch).

Clarify, in Federal Acquisition Regulation (FAR) and OMB A-130 guidance, that tribes may use federal grant funds to procure AI-as-a-Service directly when solutions rely on open and consensus standards. Avoid duplicative state intermediation and reduce cost.

Owner: OMB with the Office of Federal Procurement Policy. **Lever:** A-130 clarification and FAR class deviation or guidance. **Metric:** number of tribal procurements approved; reduction in average procurement cycle time.

7. Tribal data control framework—tiered, rights-based approach.

Adopt a tiered framework that distinguishes: (A) personally identifiable tribal citizen data covered by existing privacy law; (B) designated nonpublic cultural or traditional knowledge explicitly identified by a tribe as restricted, treated as confidential intellectual property licensed by contract; and (C) public information and general knowledge, which remains open to research and journalism. Publish model licenses and templates for tier B that allow authorization, conditions, and pricing, while leaving public information unaffected.

Owner: OSTP, National Telecommunications and Information Administration (NTIA), DOI, and DOJ. **Lever:** model licenses and explanatory guidance. **Metric:** number of tier B licenses; turnaround times; compliance audit results.

8. Model interagency data-sharing templates (data practices; testing and validation).

Publish model agreements for privacy-preserving data exchange across health, housing, courts, and administration. Align with HIPAA and 42 C.F.R. Part 2; include standard de-identification and audit provisions; reference tribal law where applicable; write for nonlawyers. Ensure templates are consistent with the tiered data framework.

Owner: NTIA, HHS/IHS, DOI, and DOJ. **Lever:** joint model memoranda of understanding and technical appendices. **Metric:** number of executed agreements; time to signature; audit pass rates.

Why Tribal Context Matters

Federal programs often route through states, but tribes do not fit that template. They need direct paths to acquire, test, and govern AI tools in clinics, schools, courts, land offices, and public safety. They also need predictable data rules across DOI, HHS, HUD, NIST, and NTIA. Without clarity, agencies and vendors stall, and pilots die.

Pilot Proposal: Tribal AI Innovation Cohort

Coordinate a cohort of 14 early-adopter tribes to test the reforms in this comment. Commit to the parity rule, the PRA fast-track, FedRAMP reciprocity with customer controls, and the tiered data framework. Track simple metrics: time to deployment, cost to comply, and measurable service improvements, such as days to schedule a clinic visit or days to complete a housing application. Publish metrics quarterly.

Implementation Details

Publish model documents within 90 days. Name a point of contact at each agency. Hold quarterly office hours for tribes and vendors. Track and publish timelines and error rates. Keep forms short. Avoid bespoke waivers when a model template solves the problem.

Closing

These steps remove friction without changing statutes. They speed responsible AI use where it delivers the most value per dollar. I would welcome the chance to participate in an OSTP roundtable with DOI, HHS, HUD, NIST, OMB, and tribal leaders to finalize templates and timelines.

Attachment: Policy Spotlight—Unlocking Growth on Tribal Lands (PDF)

Appendix—Statutory Context for Congressional Consideration

This appendix is not a direct response to OSTP’s regulatory RFI. It flags statutory issues that affect AI adoption in Indian Country and may warrant separate congressional action.

A. Territorial primacy and exclusivity (statutory).

Congress should clarify that tribes hold primary civil regulatory authority over AI systems operated by tribal governments and tribally owned entities in Indian Country, and they may exercise territorial jurisdiction over nonmembers engaged in consensual relations or activities implicating health, safety, and welfare, consistent with *Montana v. United States*⁴ and related doctrine.

B. Territorial primacy and state intrusion (*Williams v. Lee*⁵ and progeny).

Codify a clear territorial-sovereignty frame for civil disputes arising in Indian Country and limit state court intrusion. A primacy rule reduces forum conflict and improves legal certainty for data sharing, procurement, and public administration that depend on AI systems.

C. Tax and regulatory duplication (*McClanahan*⁶; *Cotton Petroleum*⁷).

Eliminate dual taxation and duplicative regulation that deter investment in digital infrastructure and cloud services. Statutory clarification would prevent inconsistent state levies on AI-related services procured by tribes.

D. *Montana* framework and nonmember jurisdiction.

Reaffirm police-powers and consensual-relations bases for jurisdiction over nonmembers engaged in commerce in Indian Country, to support enforceable data-use, confidentiality, and procurement agreements tied to AI deployments.

E. *Nevada v. Hicks*⁸ and domestication before execution.

Require domestication of state orders in tribal courts before execution in Indian Country. This reduces conflict over cross-jurisdictional subpoenas, warrants, and orders involving digital evidence or cloud records.

⁴ 450 U.S. 544, 565–66 (1981).

⁵ 358 U.S. 217 (1959).

⁶ *McClanahan v. Arizona State Tax Comm’n*, 411 U.S. 164 (1973).

⁷ *Cotton Petroleum Corp. v. New Mexico*, 490 U.S. 163 (1989).

⁸ 533 U.S. 353 (2001).

F. Public Law 83-280 (state jurisdiction in Indian Country): transitions and retrocession.

Public Law 83-280 is the 1953 law that gave specific states criminal and limited civil authority in Indian Country; “retrocession” is the formal return of that authority to the United States at a tribe’s request.⁹

Provide a clear path for transition or retrocession of jurisdiction from state to tribal/federal systems, with timelines, technical assistance, and a presumption that transitions proceed as summarily as practicable upon tribal request and federal acceptance. Clarify notice, record-transfer, cross-deputation, and funding handoff for health, public safety, and administrative data so AI systems operate under a single, coherent governance framework rather than fragmented state–federal–tribal rules.

G. Federal tribunal fallback for commerce cases.

Create a narrow district-court head of jurisdiction for significant tribal commerce disputes with an exhaustion requirement. This provides a predictable backstop for contracts that govern AI procurement, services, and data rights.

H. Code publication and judicial notice.

Require publication of tribal codes and recognition of judicial notice in federal and state courts. Predictable access to law improves vendor due diligence and speeds AI contracting.

⁹ Pub. L. No. 83-280 (1953), codified at 18 U.S.C. § 1162 and 28 U.S.C. § 1360. The 1968 amendments (25 U.S.C. §§ 1321–26) require tribal consent for new state assumptions and authorize retrocession by a state to the United States (25 U.S.C. § 1323).