



FEMA POLICY: FEMA Tribal Consultation Policy

FEMA Policy #101-002-02

BACKGROUND

This policy applies to all Federal Emergency Management Agency (FEMA) programs and headquarters and regional employees responsible for developing or implementing actions on behalf of FEMA that may have an impact on the public or any non-federal entity. This policy also applies to those employees responsible for engaging in regular and meaningful consultation and coordination with federally recognized Indian tribal governments and Alaska Native Corporations (ANCs), if applicable, on actions that have tribal implications.¹ FEMA is committed to strengthening its nation-to-nation relationship and consultation efforts with tribal governments².

FEMA tribal consultation is the process for communicating and collaborating with federally recognized Indian tribal governments and ANCs (hereinafter collectively referred to as “tribal governments”) to exchange information, receive input, and consider their views on actions that have tribal implications. This policy provides guidance on Agency-wide tribal consultation protocol and applies to FEMA actions that have tribal implications.

For information on consultation concerning environmental planning and historic and cultural preservation requirements for mitigation and infrastructure projects, please see [FEMA Directive 108-1](#).

This updated policy supersedes the FEMA Tribal Consultation Policy dated August 12, 2014, and all previous guidance on this subject, and this policy applies to FEMA actions commenced on or after the date of issuance. This policy is consistent with existing law and does not alter or supersede the authorities of FEMA or those of any other federal agencies. Further, this policy does not diminish or modify existing tribal government authority in any way.

¹ Federal agencies’ consultation requirements for Alaska Native Claims Settlement Act corporations are found in Pub. L. No. 108-199, 118 Stat. 3, 452, Div. H § 161, (2004) as amended by Pub. L. No. 108-447, 118 Stat. 2809, 3267, Div. H, Tit. V, § 518 (2004). Specifically, the requirement is for the Director of the Office of Management and Budget and all federal agencies to consult with ANCs on the same basis as Indian tribal governments under Executive Order 13175. Therefore, any reference in this Consultation Policy to tribal consultation, tribal governments, tribes, tribal officials, and tribal implications also includes ANCs for consultation purposes.

² Pursuant to the Alaska Native Claims Settlement Act (ANCSA) of 1971, Pub. L. 92-302, codified as amended at 43 U.S.C. 1601 et seq., ANCs are not federally recognized Indian tribes or have inherent tribal sovereignty, but are corporations under the laws of the State of Alaska. Therefore, FEMA does not have a nation-to-nation relationship with ANCs. ANCs are not to be confused with federally recognized Alaska Native tribes.



PURPOSE

This policy guides how FEMA engages tribal governments in regular and meaningful consultation and collaboration on actions that have tribal implications.

PRINCIPLES

- A. FEMA Policy 305-111-1 (Tribal Policy) serves as the foundation for all FEMA engagement with tribal governments, including tribal consultation, and establishes how FEMA operates with regard to tribal governments and outlines a framework for nation-to-nation relations with tribal governments that recognizes tribal sovereignty, self-governance, and FEMA's trust responsibility.³
- B. FEMA will consult with tribal officials on actions that have tribal implications and will maintain a distinct policy guiding the Agency's consultation process that reflects the unique circumstances affecting tribal governments.
- C. FEMA will respect and support the unique status of sovereign tribal governments by engaging in meaningful dialogue that will assist tribal communities with any emergency management needs that fall under the authority of FEMA.⁴
- D. FEMA will commit to an inclusive and collaborative tribal consultation process and provide tribal governments sufficient time to submit input on actions that have tribal implications.
- E. FEMA will consider tribal input on actions that have tribal implications and will follow up with tribes on the final decision about how input was utilized.

PROTOCOL

This section provides the steps to conduct FEMA tribal consultation in four phases: Identify, Notify, Input, and Follow-up.

A. PHASE 1: IDENTIFY

Outcome: FEMA will identify if an Agency action has tribal implications and will determine if the action requires tribal consultation, or a tribal government may request FEMA to consider tribal consultation on an action by contacting FEMA's National Tribal Affairs Advisor (NTAA).

1. If a tribal government requests FEMA to consider tribal consultation on an action, FEMA will work with the tribe to honor the request and determine the method of consultation.
2. Tribal consultation should occur early in the decision-making process to allow tribal governments the opportunity to provide meaningful input and to give FEMA the opportunity to consider the input.

B. PHASE 2: NOTIFY

Outcome: Once FEMA identifies the need to conduct tribal consultation on an action, FEMA will notify the affected tribal governments.

1. FEMA notifies tribal officials using various methods to inform them of the decision to consult and the consultation period and provides tribal governments with sufficient

³ FEMA Policy 305-111-1 (Tribal Policy) (December 27, 2016).

⁴ Ibid.



information to make an informed decision about whether to participate in consultation and how to provide their input.

C. PHASE 3: INPUT

Outcome: FEMA determines the process for communicating and collaborating with tribal governments to exchange information, receive input, and consider the views of tribes on actions that have tribal implications.

1. For each consultation, FEMA develops a method of consultation, which will include details on a budget for consultation expenses, timeframe, an outreach plan to tribal governments, schedule of consultation opportunities, method of delivery (e.g. via webinar or in-person), and details for how to record input.
2. FEMA provides a tribal official or their appointed designee the opportunity to have FEMA officials listen to their concerns, ask questions, and submit input.
3. This phase continues until FEMA finds that there is sufficient input to make an informed decision about the action.
4. FEMA keeps a record of the input received from tribal officials during the consultation period.

D. PHASE 4: FOLLOW-UP

Outcome: After FEMA consults with tribal officials and their appointed designees, FEMA considers the input received during the consultation period and incorporates that input into the Agency's decision-making process. FEMA then follows up with all tribal officials who were engaged in consultation and communicates how tribal input was used to inform the final decision.

Pete Gaynor
Acting FEMA Administrator

July 3, 2019



ADDITIONAL INFORMATION

REVIEW CYCLE

FEMA Policy 101-002.01 (FEMA Tribal Consultation Policy), will be reviewed, reissued, revised, or rescinded within four years of the issue date.

AUTHORITIES

- A. Homeland Security Act of 2002, Pub. L. 107-296, as amended (6 U.S.C. 101 *et seq.*).
- B. Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), Pub. L. 93-288, as amended (42 U.S.C. 5121 *et seq.*).
- C. Federally Recognized Indian Tribe List Act of 1994, Pub. L. 103-454, 25 U.S.C. 5130-5131).
- D. Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments*. (2000)
- E. Presidential Memorandum of November 5, 2009, *Tribal Consultation*.
- F. Executive Order 13647, *Establishing the White House Council on Native American Affairs*. (2013)
- G. Public Law 108-199, 118 Stat. 452, Div. H, § 161, as amended by Pub. L. 108-447, 118 Stat. 3267, Div. H, Tit. V, § 518 (2004).
- H. FEMA Policy 305-111-1 (Tribal Policy) (December 2016).

REFERENCES

- A. Department of Homeland Security Tribal Consultation Policy.
- B. FEMA Directive 108-1 (Environmental Planning and Historic Preservation Responsibilities and Program Requirements) (October 2018).
- C. Alaska Native Claims Settlement Act of 1971, Pub. L. 92-302, as amended, 43 U.S.C. 1601 *et seq.*

DEFINITIONS

Action that has tribal implications: FEMA regulations, rules, legislative proposals, policies, directives, or other policy statements that have substantial direct effects on one or more tribal governments, on the relationship between the federal government and tribal governments, or on the distribution of power and responsibilities between the federal government and tribal governments.

Alaska Native Corporation (ANC): Any Alaska Native village corporation, urban corporation, or regional corporation as defined in, or established under, the Alaska Native Claims Settlement Act (43 U.S.C. § 1601, *et seq.*).

Consultation: Involves the direct, timely, and interactive involvement of tribal governments regarding proposed federal actions that have direct tribal implications. At FEMA, this means the process of communicating and collaborating with tribal officials to exchange information, receive input, and consider the views of tribes on actions that have tribal implications.



Chief Executive: The person who is the Chief, Chair, Chairman, Chairwoman, Governor, President, or similar executive official of an Indian tribal government. See Stafford Act § 102(12) [42 U.S.C. 5122(12)].

Federally Recognized Indian Tribe, Tribe, or Tribal Nation: Any American Indian or Alaska Native tribe, band, nation, pueblo, village, or community that is recognized in the most recent list of "Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs." See Federally Recognized Indian Tribe List Act of 1994, Public Law 103-454. 25 U.S.C. 5130-5131.

Indian Tribal Government or Tribal Government: The governing body of any American Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of Interior acknowledges to exist as an Indian tribe under the Federally Recognized Indian Tribe List Act of 1994. See also Stafford Act § 102(6) [42 U.S.C. 5122(6)].

Listening Session: Serves as an opportunity to bring together tribal officials, their appointed designees, and/or representatives to exchange information and discuss a FEMA action that has tribal implications, capture tribal input, and answer any questions.

National Tribal Affairs Advisor (NTAA): The agency's subject matter expert on tribal issues who advises Senior Agency Officials and Tribal Consultation Coordinators on issues related to consultation with tribal officials. The NTAA, along with Office of External Affairs, Congressional and Intergovernmental Affairs Division, Tribal Partners Branch, leads efforts to develop specific training on tribal relations and tribal consultation for FEMA employees who regularly engage in actions that have tribal implications. This training should address topics such as American Indian and Alaska Native cultures and governments, inherent tribal sovereignty, treaty rights, the trust responsibility of the United States, and tribal self-government and self-determination.

Regional Tribal Liaison (RTL): Appointed by each FEMA region as the principal advisor to the Regional Administrators and regional office on tribal matters. The RTL develops close working relationships with tribal governments in their respective region. RTLs are the first FEMA point of contact for tribal governments and coordinate the delivery of technical assistance to tribal governments on FEMA programs. RTLs assist Senior Agency Officials, tribal consultation coordinators (TCC), tribal integration subject matter experts (SME), and the NTAA to identify appropriate tribal officials to contact for consultation, best methods for notification, and preferred methods of consultation.

Senior Agency Officials: Senior Agency Officials are the Deputy Administrator, Associate Administrators, Regional Administrators, Federal Coordinating Officers (FCO), Directors, or any other official reporting directly to the Administrator, or their designated representative, responsible for all phases of consultation within their respective offices.



FEMA

Tribal Consultation Coordinators (TCCs): Designated by a Senior Agency Official to carry out consultation on an action that has tribal implications for their respective offices in coordination with the NTAA. TCCs assist Senior Agency Officials to implement this policy in their respective offices. TCCs must be familiar with the unique circumstances that affect tribal governments, the cultural sensitivities that could impact tribal consultation, and the nature of the relationship between tribal governments and the federal government. TCCs can gain this familiarity through training from the NTAA or the Congressional and Intergovernmental Affairs Division, Tribal Partners Branch staff.

Tribal Officials: Refers to a tribal chief executive and/or duly appointed official(s)/designee(s) of tribal governments or authorized intertribal organizations.

MONITORING AND EVALUATION

The NTAA, Office of External Affairs, Congressional and Intergovernmental Affairs Division, Tribal Partners Branch, and Office of Policy and Program Analysis will evaluate the national implementation and effectiveness of this policy across FEMA programs and regions with the help of the RTLs.

QUESTIONS

Direct questions to the Tribal Partners Branch at FEMA-Tribal@fema.dhs.gov.