

Instruction 101-002-02-1: FEMA Tribal Consultation

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Overview

These instructions provide guidance and direction for the Federal Emergency Management Agency's (FEMA) implementation of [FEMA Policy 101-002-02](#), FEMA Tribal Consultation Policy. This document provides the steps to conduct regular and meaningful consultation and coordination with federally recognized Indian tribal governments and Alaska Native Corporations¹, if applicable, on Agency actions that have tribal implications.

Purpose

To provide procedural details to FEMA Policy 101-002-02, FEMA Tribal Consultation Policy.

Overarching Tribal Consultation Approach

These instructions are written in a way to encourage engagement within the agency if in doubt as to whether or not tribal consultation is warranted.

As summarized in President Biden's "Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships," dated January 26, 2021, Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments (2000)* charges all agencies "with engaging in regular, meaningful, and robust consultation with Tribal officials in the development of Federal policies that have Tribal implications," thereby strengthening the Nation-to-Nation relationship between the United States and Tribal Nations. The order required federal departments and agencies to consult with Indian tribal governments when considering policies that have tribal implications. Executive Order 13175 defines "policies that have Tribal implications" as those regulations, legislative comments or proposed legislation, and other policy statements or acts 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." FEMA in this Instruction refers to such policies collectively as "actions."

Tribal consultation is with the tribal government and not individual tribal members. In other words, FEMA enters into an agreement with the governor of a state, not individual citizens of that state. The same principle applies to tribal governments and tribal members.

¹ Federal agencies' consultation requirements for Alaska Native Claims Settlement Act corporations are found in Pub. L. 108-199, 118 Stat. 3, 452, Div. H, § 161 (2004), as amended by Pub. L. 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 Alaska Native Corporations (ANCs) on the same basis as Indian tribal governments under Executive Order 13175. Therefore, any reference in this instruction to tribal consultation, tribal governments, tribes, tribal officials, and tribal implications also includes ANCs for consultation purposes.

Tribal consultation is 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.² FEMA incorporates tribal input into its decision-making process. This helps FEMA develop policies and take actions that build capabilities, address tribal needs, and consider interests of affected tribal governments. FEMA will also apply its core values of compassion, fairness, integrity, and respect.

Tribal governments can request that FEMA consider tribal consultation on an Agency action and FEMA will work with the tribe to honor the request and determine the method of consultation.

Additionally, tribal consultation at FEMA may be prompted internally by the [National Tribal Affairs Advisor](#) (NTAA) or by the programs themselves. FEMA component offices should make every effort to review each Agency action early during the framing and drafting process and determine if it has tribal implications and whether tribal consultation is required. In some cases, FEMA is specifically and legally required to conduct tribal consultation (e.g., the Administrator must consult with tribal governments in the region before appointing a Regional Administrator).³

Each consultation will be unique. This cannot be stressed enough; tribal consultation is not a perfect science. Laws, policies and guidance change. Federal agency officials change frequently, as do elected tribal officials. When in doubt, contact the National Tribal Affairs Advisor for guidance and additional information.

Tribal consultation at FEMA consists of four phases: Identify; Notify; Input; and Follow-up.

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 contact and request that FEMA consider tribal consultation on an action.

The process outlined here details the steps to take when an agency action triggers staff time and financial resources to conduct tribal consultation. This would typically occur when an agency action has tribal implications or affects all

² Pursuant to the Alaska Native Claims Settlement Act of 1971 (ANCSA) 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.

³ Homeland Security Act of 2002 § 507(b)(1) [6 U.S.C. 317(b)(1)].

federally recognized Indian tribes. It does not outline the process used in a Joint Field Office or region when working with a tribal nation during a disaster.

A tribe can request that FEMA consider tribal consultation on an action by contacting FEMA's NTAA or a FEMA [Regional Tribal Liaison](#) (RTL), who will inform the NTAA. The NTAA will work with the appropriate FEMA component office to honor the tribe's request and determine the method of consultation.

Consultation should occur early in the decision-making process to allow tribal governments the opportunity to provide meaningful input, if they so choose, and to give FEMA the opportunity to consider input. Tribal consultation responsibilities should be built into each division's planning processes and reflected in their standard operating procedures, job aids, and guides. If such planning was done upfront, any necessary staff time and financial resources would be requested upfront and the timeline would include adequate tribal engagement. For example, many provisions of a new or amended federal law will require the affected agency to interpret and implement, and this is often accomplished using the public notice process of publishing a notice in the *Federal Register*. If an agency, such as FEMA, is unable to engage tribes in the development of the rulemaking prior to publication, many times the tribal engagement comes during the public comment period. Time and resources to engage in tribal consultation should be included in the planning.

FEMA's Tribal Consultation Coordinator (Coordinator) is designated by a Senior Agency Official to work in coordination with the NTAA to determine the best time to begin consultation and length of the consultation period. In limited circumstances, it may be necessary to prioritize consultation requirements based on the relative importance of the action when weighed against time and resource constraints. For example, during the COVID-19 public health emergency, FEMA issued a policy clarification to account for unique eligibility questions raised during the pandemic. FEMA did not consult with states, tribes, or territories when issuing this policy clarification due to the urgent needs and unique circumstances of the public health emergency. However, the FEMA Recovery Directorate did engage in a Tribal Listening Session on this experience later during the pandemic.

An example of FEMA proactively engaging in tribal consultation prior to an action occurred in the development of section 1234 of the Disaster Recovery and Reform Act of 2018, which among other things established the Building Resilient Infrastructure and Communities (BRIC) program. FEMA's Hazard Mitigation Administration (HMA) engaged in several in-person consultation meetings and additional tribal webinars to explain the provisions and seek tribal input. All tribal input was incorporated into HMA's report, [Summary of Stakeholder Feedback – Building Resilient Infrastructure and Communities](#).

Determine If the Action Has Tribal Implications

The Senior Agency Official, or their designee, in coordination with the NTAA, and other pertinent staff determine whether an Agency action has tribal implications and requires tribal consultation.

The Senior Agency Official and/or other pertinent staff should use the [Tribal Consultation Determination Worksheet](#) (see Appendix A), which outlines the questions detailed below. Upon receipt of the Tribal Consultation Documentation Worksheet, including when there is a determination that the action does not have tribal implications, the NTAA will follow up with the Senior Agency Official to discuss next steps.

Tribal consultation is required if an action has tribal implications even where the action may also impact states and territories.

1. What is an Agency action?

An action can include developing, implementing, and revising:

- a. Regulations and rules;
- b. Legislative comments or proposals; or
- c. Policies, directives, or other actions.

2. What is an Agency action that has tribal implications?

An Agency action has tribal implications when the action has substantial direct effects on:

- a. One or more tribal governments;
- b. The relationship between the federal government and tribal governments (for example, FEMA is developing a regulation that would require a new way that tribal governments may seek assistance from FEMA, and this regulation will not change this process for states or local government); or
- c. The distribution of power and responsibilities between the federal government and tribal governments (for example, FEMA is developing a new policy that gives tribal governments the option to administer a FEMA grant or is changing the tribal government's role and responsibility over the administration of the federal grant).

If in doubt on any of these scenarios or there are questions or need for additional information, the NTAA shall be contacted for further direction.

The term “substantial direct effect” generally refers to an effect on a tribal government that includes all the following characteristics:

- a. The effect is directly caused by the FEMA action, whether or not it affects states and territories;
- b. The effect has either a beneficial or adverse impact; and
- c. The effect is significant in size and scope. For example, if a FEMA action affects every federally recognized Indian tribe, then the overall affect is significant. This is not dependent on whether or not the impact also affects states or territories.

3. Does the Action Require Tribal Consultation?

If the Senior Agency Official or their designee in coordination with the NTAA determines the action has tribal implications, then FEMA will consult with the affected tribal government(s) in the development of the action.

If the Senior Agency Official in coordination with the NTAA determines that the action does not have tribal implications and does not need tribal consultation, then the Senior Agency Official or their designee must notify the NTAA of this decision and provide the [Tribal Consultation Determination Worksheet](#) as documentation of the determination.

Determine Which Method of Tribal Consultation to Use

If the Senior Agency Official in coordination with the NTAA determines that the action has tribal implications, a [Tribal Consultation Approach Proposal](#) (see Appendix B) will be developed.

There are various methods to conduct consultation with tribal governments. Consultation may include, but is not limited to, face-to-face meetings with one or more tribal governments or tribal officials, regional listening sessions with several tribal governments or tribal officials, national or regional hosted webinars, and in some limited circumstances, phone calls, conference calls, and electronic or paper correspondence.

1. The Senior Agency Official may appoint a Coordinator to carry out consultation on the action for the respective office, in coordination with the NTAA. The Senior Agency Official and the Coordinator work in coordination with the NTAA early in the process to determine suitable methods of consultation for the action. Several factors are considered in determining suitable method(s) of consultation, including:
 - a. The complexity of the FEMA action;
 - b. The number of tribal governments impacted;
 - c. The scope, scale, and degree of the tribal implications;
 - d. FEMA and tribal time and resource constraints;

- e. The stated preference of the affected tribal government(s) as to which tribal official(s) should be consulted;
 - f. The unique cultural sensitivities of the tribal governments; and
 - g. The technological capabilities of the tribal governments.
2. To determine the type and extent of engagement, the Senior Agency Official and/or Coordinator and the NTAA will deliberate on the options available.
- a. For a large-scale action, more extensive consultation may be required to ensure tribes have ample opportunity to participate in the feedback process. This may require Agency-wide coordination, close collaboration between FEMA headquarters and regions, a separate communication plan, a resource and budget strategy, and a significant amount of time. For example, some large-scale actions, such as the [Tribal Declarations Pilot Guidance](#) (which reflect an updated relationship between the federal government and a tribal government in a way that greatly impacted tribes) may warrant a series of meetings and/or listening sessions in geographically diverse and convenient locations for tribal officials.
 - b. Smaller-scale actions may not require national engagement activities but may require more than regular Office of External Affairs engagement processes or other FEMA program outreach. In these cases, a series of webinars, conference calls, or any forum that allows for tribal feedback may be sufficient. In addition, targeting intertribal meetings or tribal working groups (existing groups or groups created for a specific action) may also be an effective engagement strategy. It is imperative that the NTAA is involved in the discussions on tribal consultation that includes ensuring the proposed methodology is appropriate for the respective action. For example, FEMA may want to engage tribes that are the recipients of a specific grant to deliberate on the grant application and reporting process. This could be achieved by a webinar or a small group in-person meeting.

Note: Operational interactions that occur between federal and tribal middle level management and technical staff at meetings, site-visits, or at the Joint Field Office during an active disaster, should not necessarily be considered tribal consultation unless all parties are in agreement.

It should be emphasized that whenever possible, face-to-face communication is the preferred method of engagement for tribal governments, especially for a large-scale action.

To the fullest extent possible, and considering the preference of tribal partners, existing opportunities for consultation shall be used. For example, the Senior Agency Official, Coordinator, NTAA, or Regional Tribal Liaison may engage with tribal governments at previously scheduled FEMA or tribal meetings or conferences or may coordinate with tribal governments to arrange conference calls, face-to-face meetings, or listening sessions for the purpose of exchanging information and input on the action.

If FEMA and the affected tribal government have divergent views about the method of consultation, both parties should make every effort to come to an agreement on a suitable method, taking into consideration factors such as the tribal government's stated preference and Agency and tribal resource limitations. The Senior Agency Official or Coordinator shall note for the record why FEMA was unable to accommodate the tribal government request and what alternative options were offered.

Given FEMA's mission it may be necessary to forgo, limit, or postpone consultation if the action is considered essential to saving lives and protecting and preserving property or public health and safety (e.g., interim documents).⁴ In these cases, tribal consultation should be held post-disaster that seeks tribal review and comment on any affected policy, law, or guidance.

Phase 2: Notify

Outcome: Once FEMA identifies the need to conduct tribal consultation on an action, FEMA will notify the affected tribal government(s).

Providing Adequate Notification for Consultation Opportunities

It is important for FEMA to properly notify the tribal government(s) with which it wishes to consult. The breadth of tribal consultation depends on whether the action impacts an individual tribe, several tribes within a specific region or multiple regions, or all tribes across the country. This assessment determines whether a national or targeted tribal consultation is required. Below are considerations when notifying tribal leaders of tribal consultation:

1. Notification provided to tribal governments should include:

⁴ As established in FEMA Directive 112-12: Development and Management of FEMA Policies, interim policies, directives, and instructions address an acute, time-sensitive requirement and are only published when their absence would result in harm or disadvantage to FEMA employees, disaster survivors, FEMA grant recipients or subrecipients, or National Flood Insurance Program policyholders.

- a. Overview of the consultation process;
 - b. Description of the topic(s) to be reviewed and discussed (if appropriate, a summary or fact sheet describing the changes or significance of the action may be helpful);
 - c. Schedule of planned engagement (e.g., in-person meetings, regional listening sessions);
 - d. Description of how tribal input will be received;
 - e. Timeframe for submitting such input (typically 30-day open comment period); and
 - f. Contact information of the FEMA employee(s) who can provide technical assistance, respond to questions, and provide clarification on any issues the tribe may have.
2. Notification includes a letter and relevant attachments to the tribal official(s) of the affected tribe(s) that FEMA is consulting on an action. The correspondence is typically from the FEMA Administrator or Senior Agency Official and should go through targeted review, as appropriate, and Triad review. A notification letter should be mailed or sent electronically to each tribal government's designated official. An email copy should also be sent. Notification will also be sent to the appropriate designee of the tribe whom FEMA regularly works with (such as the tribal emergency manager or tribal executive director).

The tribal official(s) or their appointed designee(s) may have additional preferred methods of communication. Additional methods may include phone calls, electronic or paper correspondence, coordination with national and regional tribal associations, and publication in relevant media or the *Federal Register*. FEMA staff shall make a reasonable effort to communicate with the tribal official(s) of affected tribal government(s) in a manner that will be sensitive to the uniqueness of the affected tribal government(s) and to honor any tribal government preferences regarding the specific method of contact. The Coordinator works with the NTAA to determine the best method of communicating with the tribal official(s). The Regional Tribal Liaisons also assist in contacting the tribal official(s) located in each region. The NTAA assists the Coordinator to contact authorized intertribal associations and organizations, in addition to affected tribal government(s), to ensure tribal government awareness of the opportunity.

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 Agency actions that have tribal implications.

Develop Consultation Plan of Action

For large-scale actions, the Coordinator works in coordination with the NTAA and a Regional Tribal Liaison(s), as appropriate, to develop a Consultation Plan of Action that should include:

1. FEMA points of contact;
2. A consultation period of performance: usually announce at a minimum 30 days in advance of each event and have a 30-day post event comment period;
3. An outreach plan that includes elements from an External Affairs Guidance that addresses the following components:
 1. Background content;
 2. Key messaging and Talking Points;
 3. Draft FEMA Advisory language;
 4. Fact Sheets;
 5. Frequently Asked Questions;
 6. Social media content (e.g., FEMA.gov website, Twitter, Facebook);
 7. Presentation content (e.g., PowerPoint slide decks; infographics);
 8. Read-ahead documents; and
 9. Other information, as needed.
4. A schedule that includes the dates, times, and locations of the planned consultation events;
5. A plan on how consultation will be documented (see [Document Tribal Input](#) section below);
6. Explanation of headquarters and regional responsibilities related to the logistics for facilitating consultation (meeting location, funding, personnel and roles, room set-up for in-person meetings or listening session, translation services, and other issues of protocol when meeting or speaking with tribal official(s));
7. An agenda that identifies meeting objectives and outcomes as well as a schedule for the meeting or listening session that includes call to order, opening prayer or other cultural recognition, introductions, roll call, overview, discussion, and closing comments, if needed;
8. Depending on the type of consultation, identify a plan of action and milestones with associated budget of consultation expenses that includes estimated travel expenses for headquarters employees and regional employees, room and equipment rental and related meeting costs, if needed; and
9. FEMA conference approval documentation, if required.

Information Sharing and Input during Consultation

FEMA receives input from tribal official(s), or their appointed designee(s), on the action and incorporates the input received into the Agency's decision-making process. This phase continues until the Senior Agency Official or Coordinator finds that there is sufficient input to make an informed decision about the action.

Subsequent rounds of input may be necessary if there are significant changes to the originally proposed action or if new issues arise.

1. The consultation engagement session is not a solo experience and should, if possible, be facilitated by an experienced facilitator, who has authority to speak for and represent the Agency, in concert with other FEMA officials. Additional participants should include one or more of the following: The Senior Agency Official, Coordinator, the NTAA, FEMA regional staff including the Regional Tribal Liaison, and at least one FEMA subject matter expert who is familiar with the action. The facilitator should also understand 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. The NTAA or Regional Tribal Liaisons can provide cultural sensitivity training, if needed.
2. FEMA employees who participate in consultation should explain the scope of the FEMA action under consideration. In order for tribes to provide reasonable and meaningful feedback, FEMA must fully and plainly explain the action being taken and provide background information that would better inform feedback, including answering clarifying questions. Tribes may not have in-depth experience with FEMA programs, and FEMA should be prepared to provide more explanation and context, if needed.
3. FEMA employees should respect that this is time for tribal official(s) and/or their appointed designee(s) to provide input to FEMA. FEMA representatives should actively listen and document tribal input, but they should not comment on, agree with, or disagree with input received from tribal official(s) and/or their appointed designee(s).
4. The FEMA facilitator should begin the engagement session by stating the purpose of the consultation and should set the expectation that in receiving input from the tribal official(s) and/or their appointed designee(s), FEMA is not agreeing to any particular result suggested during the consultation but rather is there to listen to, receive, and document the input from the tribal officials so the Agency may make better informed decisions about the action.

Document Tribal Input

The Coordinator in coordination with the NTAA keeps a record of the input phase of consultation.

1. At the beginning of a consultation engagement session, the FEMA facilitator discusses how the session will be documented with the tribal official(s) participating. Documentation includes, at a minimum:
 - a. The date and location of the session;
 - b. A list of tribal and FEMA participants;
 - c. Contact information for the tribal participants;

- d. A summary of the issues discussed; and
- e. A thorough description of the input and questions received from tribal participants.

Examples of documentation can include, but is not limited to, a FEMA note taker, a video or voice recording, or a professional transcript. If FEMA takes notes at the session, it is recommended that these notes be circulated with all tribal participants for review and comment to ensure the views of tribal participants are accurately captured. If FEMA creates voice or video recordings of the meetings or session, the facilitator must make an announcement at the beginning of the session that the session will be recorded by a specific medium (e.g., voice, video), and continued participation in the recorded meeting or session will constitute consent to the recording. If tribal officials oppose such recordings, then FEMA should not record the engagement. FEMA should pre-coordinate with tribal officials on any needs for native speakers and ensure that a translator is available, if requested.

- 2. Tribal official(s) and/or their appointed designee(s) may provide input on the action by:
 - a. Submitting comments online in response to a *Federal Register* notice (if action is posted in the *Federal Register* (www.federalregister.gov) via <https://www.regulations.gov/>;
 - b. Submitting comments via email to the FEMA tribal consultation email address (tribalconsultation@fema.dhs.gov) or to the NTAA or a Regional Tribal Liaison; or
 - c. Submitting comments through the mail (at the FEMA mailing address provided by the Coordinator).
- 3. All documentation and submitted comments should be saved by the Coordinator and NTAA. Each FEMA division that undertakes tribal consultation shall keep the official record of their effort. Furthermore, they should send a copy of the record to the NTAA, who shall maintain a record for the tribal team and who shall refer to for future reviews of the tribal consultation process.

Addressing Federal Advisory Committee Act (FACA) Requirements

In accordance with section 204(b) of the *Unfunded Mandates Reform Act of 1995* (2 U.S.C. 1534(b)), the provisions of the *Federal Advisory Committee Act* (5 U.S.C. App.) do not apply to consultations, conducted pursuant to this Instruction, with elected officers of a tribal government or their designated

employees with authority to act on their behalf.⁵ Participants other than elected or appointed officers of tribal governments may be present at the consultation, such as representatives from authorized intertribal organizations. Additionally, to ensure compliance with FACA, the facilitator shall make a statement at the beginning of the consultation that FEMA is not soliciting or accepting consensus advice or recommendations on federal laws, regulations, or policies during the meeting or listening session. Rather, the purpose of the meeting or listening session is to gather individual input from a diverse group of tribal governments. To this end, the facilitator should not steer the conversation towards consensus but should ask open-ended questions to solicit individual input and perspectives.

Phase 4: Follow-Up

Outcome: After FEMA consults with tribal official(s) and/or their appointed designee(s), 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 the tribal officials or their appointed designees who commented and inform them of how their input was used to inform the final decision.

When and How to Follow up with Tribal Governments

Once FEMA finalizes the action, the Coordinator works with the NTAA to communicate FEMA's decision on how input on the action was utilized to tribal officials and appointed designees.

1. Follow-up typically includes a description of the action that was consulted on, the dates that consultation occurred, FEMA's decision on the action, and the contact information for a FEMA employee (or the Coordinator) who can provide technical assistance or respond to any questions. In some instances, follow-up may include a summary of input received or a final product, such as a copy of a final action. Follow-up will also include an explanation of how tribal input was used in the decision-making process and final decision.
2. FEMA typically follows up with the tribal official(s) and/or their appointed designee(s) in writing to communicate the decision on the action. FEMA may also use a number of other methods for communicating follow-up, including, but not limited to: FEMA's website; FEMA Bulletin; FEMA Advisories; background in a policy or the preamble of a rulemaking; electronic or paper correspondence; publication in relevant media or the *Federal Register*; verbal communication; listening sessions at national or regional conferences; webinars; or follow-up through other suitable means.
3. It should be emphasized that in all cases the Senior Agency Official or Coordinator are expected to make every effort to follow up with the tribal official(s) and appointed designee(s) in a manner that respects tribal

⁵ See also 41 C.F.R. § 102-3.40(g) and Appendix A to Subpart A of 41 C.F.R. Part 102-3, row IV.

government preferences regarding the specific method of contact. The Coordinator works in coordination with the NTAA to determine how to follow up with the tribal official(s).

Additional Information

Review Cycle

FEMA Instruction 101-002-02-1, FEMA Tribal Consultation, will be reviewed, reissued, revised, or rescinded within four years of the issue date.

Authorities

- A. Homeland Security Act of 2002, as amended (6 U.S.C. 101 *et seq.*).
- B. Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5121 *et seq.*).
- C. Federally Recognized Indian Tribe List Act of 1994 (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. Pub. L. 108-199, 118 Stat. 452, Div. H, § 161, as amended by Pub. L. 108-447, 118 Stat. 3267, Div. H, § 518 (2004).
- H. FEMA Policy 101-002-02, FEMA Tribal Consultation Policy (July 2019)
- I. FEMA Policy 305-111-1 (Rev. 2), FEMA Tribal Policy (December 2020).

References

- A. Department of Homeland Security Tribal Consultation Policy.
- B. Presidential Memorandum of April 29, 1994, *Government-to-Government Relations with Native American Tribal Governments*.
- C. Presidential Memorandum of September 23, 2004, *Government-to-Government Relationship with Tribal Governments*.
- D. FEMA Directive 108-1, Environmental Planning and Historic Preservation Responsibilities and Program Requirements (October 2018).
- E. 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: New or proposed changes to 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 on matters that have direct tribal implications. At FEMA, this means the process of communicating and collaborating with tribal nation 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, codified at 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: An informal consultative meeting that serves as an opportunity to bring together tribal officials, their appointed designees, and/or representatives and FEMA to exchange information and discuss a FEMA action that has tribal implications; it will also capture tribal input, and answer any questions.

National Tribal Affairs Advisor (NTAA): The Agency’s subject matter expert on tribal issues, including tribal consultation, 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: Appointed by each FEMA region as the principal advisor to the Regional Administrators and regional office on tribal matters. The Regional Tribal Liaison develops close working relationships with tribal governments in their respective region and are the first FEMA point of contact for tribal governments and coordinate the delivery of technical assistance to tribal

governments on FEMA programs. Regional Tribal Liaisons assist Senior Agency Officials, tribal consultation coordinators, subject matter experts, and the NTAA to identify appropriate tribal officials to contact for consultation, best methods for notification, and preferred methods of consultation.

Senior Agency Official: A Senior Agency Official is the Deputy Administrator, Associate Administrator, Regional Administrator, Federal Coordinating Officer, Director, or any other official reporting directly to the Administrator, or their designated representative, responsible for all phases of consultation within their respective offices.

Tribal Consultation Coordinator (Coordinator): 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. Coordinators assist Senior Agency Officials to implement this instruction in their respective offices. Coordinators 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. Coordinators can gain this familiarity through training from the NTAA or the Congressional and Intergovernmental Affairs Division, Tribal Partners Branch staff.

Tribal Official: Refers to a Tribal Chief Executive and/or duly appointed official(s)/designee(s) of tribal governments or authorized intertribal organization.

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 Instruction across FEMA programs and regions, including the assistance of the Regional Tribal Liaisons.

Disclaimer

This instruction is not intended to and does not create any right to administrative or judicial review or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies, or instrumentalities, its officers or employees, or any other persons.

Questions?

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

Appendix A

TRIBAL CONSULTATION DETERMINATION WORKSHEET

Instructions: The purpose of this worksheet is to assist a Senior Agency Official, or their designee, determine whether to conduct consultation on an action and, if yes, determine how to implement. Once completed, the Tribal Consultation Planning Worksheet should be emailed to the National Tribal Affairs Advisor (NTAA) at FEMA-Tribal@fema.dhs.gov, including a determination that the action does not have tribal implications. Upon receipt of the worksheet, the NTAA will follow up with the Senior Agency Official, or their designee. Please review FEMA Instruction 101-002-02-1, FEMA Tribal Consultation, while filling out this worksheet.

How to Determine Whether to Conduct Consultation on an Action

FEMA Component Office:

- Resilience: Specify: _____
- Response & Recovery: Specify: _____
- Other: _____

Point of Contact (i.e., Senior Agency Official, designee, and/or Tribal Consultation Coordinator):

Action:

- | | | | |
|-----------------|--------------------------|------------------------|--------------------------|
| Regulation/Rule | <input type="checkbox"/> | Guidance | <input type="checkbox"/> |
| Policy | <input type="checkbox"/> | Other policy statement | <input type="checkbox"/> |
| Directive | <input type="checkbox"/> | | |

Title of Action:

Please answer the following questions to determine whether the development and review of your action has tribal implications.

Tribal Implications. Your action has tribal implications if it has a substantial, direct effect on one or more tribal governments, the relationship between the

federal government and tribal governments, or the distribution of power and responsibilities between the federal government and tribal governments.

Does the action have an effect on:

- 1. One or more tribes? Yes No
- 2. The relationship between the federal government and tribes? Yes No
- 3. The distribution of power and responsibilities between the Federal Government and Indian tribes? Yes No

If YES to any of the questions above, is the effect substantial and direct in that the effect:

- 1. Is directly caused by FEMA action? Yes No N/A
- 2. Has either a beneficial or adverse impact? Yes No N/A
- 3. Is significant in size and scope? Yes No N/A

If YES or NO, please explain in several sentences why you believe the effect is/is not substantial and direct (i.e., is the effect on tribes directly caused by the FEMA action, either beneficial or adverse, and significant?):

Appendix B

TRIBAL CONSULTATION APPROACH PROPOSAL

If you have determined that you will conduct tribal consultation on the action because it has tribal implications, please fill out this form.

Senior Agency Official, Designee, or Tribal Consultation Coordinator:

What type of consultation do you plan to utilize? (Check all that apply):

Conference Calls Email Advisories National/Regional Conferences
Face-to-face meetings Webinars *Federal Register* Notice
Listening sessions Workshop/Training Other (_____)

How did you decide on these types of consultation? Were the tribes' preferences considered in your choice?

Tribal Government(s) to be consulted:

Please list the tribe(s) impacted by the action, the tribal official (elected or duly appointed officials of tribal government(s)) that will be consulted, and the tribal official's title (i.e., Chief Executive, Governor, Emergency Manager, Tribal Council Member). Attach additional pages if necessary.

When would you like consultation to occur:

In addition to a letter and attachments from the Administrator or Senior Agency Official, check any other methods that you plan to use to notify tribal officials of the opportunity to consult:

Email FEMA Website Postal Mail
Federal Register Notice FEMA Bulletin Other (_____)

How do you plan to document input received during consultation? (Check all that apply):

- FEMA Note-taker Recording (video or voice)
Professional Transcript Comments Received by *Federal Register* Notice
Other (_____)

Follow Up: How was tribal input considered in the agency decision?

Once you have completed this planning worksheet, email it to the NTAA (via FEMA-Tribal@fema.dhs.gov). The NTAA will follow up with you to discuss next steps.