

FEMA Tribal Policy

TITLE: FEMA Tribal Policy

DATE: June 29, 2010

PURPOSE: This document responds to the Presidential Memorandum directing each department and agency to develop a detailed plan of action for compliance with Executive Order (E.O.) 13175. Both President Barack Obama and Secretary Janet Napolitano have committed to increasing nation-to-nation relationship building with Tribal communities nationwide. As a result, the Department of Homeland Security (DHS) has announced an initiative for increased consultation and coordination with federally recognized Tribes across the United States – building on current Tribal partnerships to protect the safety and security of all individuals on tribal lands through the DHS Tribal Consultation and Coordination Plan.

In support of the Administration and DHS' effort, the Federal Emergency Management Agency (FEMA) engaged all Federally-recognized Tribes to gather suggested revisions to FEMA's existing Tribal Policy. This revised policy statement has been developed, based on feedback received, to enhance FEMA's relationship with the Nation's American Indian and Alaska Native Tribal communities to support preparing for, recovering from, mitigating, and responding to all natural and manmade hazards and disasters.

SCOPE AND AUDIENCE: This policy applies to all disasters declared after publication of this document. It is intended to guide all personnel responsible for engaging in consultation and coordination with Federally-recognized tribal communities across the United States.

AUTHORITY: The Homeland Security Act of 2002, as amended (6 U.S.C. 101 *et seq.*), the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5121 *et seq.*), the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a), E.O. 13175, Consultation and Coordination With Indian Tribal Governments, and the President's Memorandum of November 5, 2009, Tribal Consultation.

BACKGROUND: On January 5, 2010, FEMA Administrator W. Craig Fugate sent a letter to all 564 Federally-recognized Tribes in the United States transmitting and requesting their review and response to FEMA's existing Tribal Policy which was originally issued on September 25, 1998. The Tribal community was asked to submit suggested revisions on the original policy to FEMA's Tribal Liaison 30 days after receiving the initial material.

Simultaneously, FEMA established an internal working group to determine changes and updates needed to ensure the document is comprehensive and meets the needs of our tribal community partners. The internal working group first met in February, 2010 to discuss reaching out to the Tribal community, the current policy, and possible revision to be made once FEMA received feedback from Tribal and FEMA's regional community representatives. This internal working group will meet periodically to discuss the most recent feedback received as well as to ensure proper implementation is taking place throughout the course of the year.

FEMA recognizes that the participation of American Indian and Alaska Native Tribal Governments is vital to enhancing nation-to-nation relations and will continue to seek their consultation. FEMA is committed to enhancing the implementation of this policy by working more closely with our governmental partners in the Nation's American Indian and Alaskan Native Tribal communities with the publication of the revised policy. We echo the sentiment expressed by Secretary Napolitano that this partnership will lead to "better policy outcomes" and will ultimately assist FEMA in achieving its mission.

FEMA's policy, as first stated in the September 25, 1998 FEMA Tribal Policy, applies to the American Indian and Alaska Native Tribal Governments as follows:

In the spirit of community, FEMA commits itself to building a strong and lasting partnership with American Indians and Alaska Natives to assist them in preparing for the hazards they face, reducing their disaster vulnerabilities, responding quickly and effectively when disasters strike, and recovering in their aftermath.

PRINCIPLES: FEMA recognizes the need to support the unique status of the American Indian and Alaska Native Tribal governments by engaging in meaningful dialogue when developing and implementing policy directives that will assist the Tribal community with their emergency management needs that fall under the auspices of FEMA. This includes, but is not limited to, the building, sustaining, and improvement of Tribal capability to prepare for, protect against, respond to, recover from, and mitigate all hazards.

This policy outlines the guiding principles and establishes implementation objectives under which all employees of FEMA are to operate with regard to Federally-recognized American Indian and Alaska Native Tribal governments.

FEMA acknowledges the inherent sovereignty of American Indian and Alaska Native Tribal governments, the trust responsibility of the federal government, and the nation-to-nation relationship between the U.S. Government and American Indian and Alaska Native Tribal governments as established by specific statutes, treaties, court decisions, executive orders, regulations, and policies. FEMA further acknowledges the precedents of the Constitution, the President of the United States, and the U.S. Congress as the foundation of this policy's content.

This policy is intended to be flexible and practical providing for the evolution of partnerships among FEMA, American Indian and Alaska Native Tribal governments, state and local governments, and other federal agencies. Working within existing statutes and authorities, FEMA will strive to be consistent in the Agency's interactions with American Indian and Alaska Native Tribal governments nationwide.

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, nor does it suggest recognition of Tribal authority that does not currently exist beyond inherent tribal sovereignty. FEMA has authority to work with American Indian and Alaska Native Tribal governments under existing law.

DEFINITIONS AND TERMS:

Federal Emergency Management Agency (FEMA): a component of the U.S. Department of Homeland Security (DHS) and is periodically referred to in this document as "the Agency." The Agency's status as a component of DHS was established under the Homeland Security Act of 2002, as amended (6 U.S.C. 101 *et seq.*), effective March, 2003.

Indian Tribal Government: any Federally-recognized governing body of an 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 Tribe List Act of 1994, 25 U.S.C 479a. This does not include Alaska Native corporations, the ownership of which is vested in private individuals.

POLICY: The following policy principles define the commitment of FEMA and its employees to build a strong and lasting partnership with American Indian and Alaska Native Tribal governments. These principles direct the Agency's interactions with American Indian and Alaskan Native Tribal governments and mirror DHS' commitment to implementing E.O. 13175, Consultation and Coordination With Indian Tribal Governments, and the President's Memorandum of November 5, 2009, Tribal Consultation. FEMA recognizes the sovereign rights, authority, and unique status of Tribal Governments and is committed to working in partnership with Indian Tribes on a nation-to-nation basis. FEMA acknowledges that a concerted effort between the Agency and American Indian and Alaska Native Tribal governments is needed in order to establish regular and meaningful consultation and collaboration in the development of policies that have Tribal implications, to strengthen the United States nation-to-nation relationships with Indian Tribes, and to minimize the imposition of unfunded mandates upon Indian Tribes.

- **FEMA commits to nation-to-nation relationships with American Indian and Alaska Native Tribal governments.**

FEMA recognizes that the Tribal right of self-government flows from the inherent sovereignty of American Indian and Alaska Native Tribes as nations and that Federally-recognized Tribes have a unique and direct relationship with the Federal government. Native American and Alaska Native Tribal governments are not political subdivisions of States, but are recognized by the United States as distinct sovereign entities.

- **FEMA will consult, to the extent permitted by law, with American Indian and Alaska Native Tribal governments before taking actions that affect Federally-recognized Tribal governments to ensure that Tribal rights and concerns are addressed.**

FEMA recognizes that, as a sovereign government, each Tribal government sets its own priorities and goals for the welfare of its membership, which include the considerations Tribal governments make to fulfill their responsibilities to their non-Tribal residents, relatives, employees, and neighboring jurisdictions. FEMA will involve Tribal governments in consultations to seek their input on policies, programs, and issues so that they may evaluate the potential impacts for their communities.

- **FEMA acknowledges the trust responsibility of the Federal Government to American Indian and Alaska Native Tribal governments as established by specific treaties, court decisions, statutes, executive orders, regulations, and policies.**

In recognition of this trust responsibility, FEMA will evaluate the impact of policies, programs, and activities on Tribal trust resources and consider the rights and concerns of Tribal governments in its decision-making. FEMA will also assist Tribal governments, should they seek assistance, in setting priorities for the interests of their community members as it relates to FEMA programs.

- **FEMA will identify and take reasonable, appropriate steps to eliminate or diminish procedural impediments to working directly and effectively with Tribal governments.**

FEMA recognizes there may be legal, procedural, organizational, or other impediments that affect its working relationships with Tribes. FEMA will apply the requirements of Executive Order (E.O.) 13175, Consultation and Coordination With Indian Tribal Governments, the "DHS Plan to Develop a Tribal Consultation and Coordination Policy," E.O. 12875, "Enhancing the Intergovernmental Partnership," and E.O. 12866, "Regulatory Planning and Review," to design solutions and tailor Agency programs to address specific or unique needs of Tribal governments, as permitted by law.

To this end, FEMA will examine the feasibility of strengthening the nation-to-nation relationship with Tribal nations in the following areas:

- Review portions of the Robert T. Stafford Disaster Relief & Emergency Assistance Act, other laws, policies, and administrative rules in emergency management activities to determine how that may allow FEMA to work more directly with local Tribal communities.
- FEMA will encourage States to incorporate the inclusion of Tribal governments into grant programs and processes to support the trust responsibility between the government and nation-to-nation relationship.
- Consider the designation of full-time Tribal liaisons in appropriate FEMA regional offices and explore the possibility of assigning attorneys within the FEMA Office of Chief Counsel (OCC) who are trained and experienced in Federal Indian Law.
- Send senior FEMA leadership periodically to engage Tribal government leadership in planning discussions prior to disasters and coordinate follow-up visits to discuss practical solutions.
- Consider expanding existing training efforts to include the development and delivery of regional homeland security and emergency management training to Tribal locations (on-site)

Within 180 days of publication of this policy, FEMA will issue an implementation plan to accomplish these activities.

- **FEMA will work in partnership with other Federal departments and agencies to enlist their support of cooperative efforts to further the goals of this policy.**

FEMA recognizes the importance of interagency communication, coordination, and cooperation to pursue and implement its Tribal policy to fulfill the Agency's commitment to work with Tribal governments in a nation-to-nation relationship.

Advisory councils within DHS have been established and proven valuable in understanding the views and opinions of our tribal partners within the homeland. Through the Federal Advisory Committee Act (FACA), these bodies enable the Secretary and other Departmental leadership to routinely hear first hand from those on the front line of state, local, and tribal government for implementing DHS policies and regulations.

The FEMA National Advisory Council (NAC), established by the Post-Katrina Emergency Management Reform Act (PKEMRA) of 2006 (Public Law 109-295), advises the Administrator of FEMA on all aspects of homeland security and emergency management. The NAC incorporates stakeholder input in the development and revision of the National Preparedness Guidelines, the National Incident Management System (NIMS), the National Response Framework (NRF), and other related plans and strategies. The NAC has both an elected Federally-recognized tribal official and tribal government representative on the council.

- **FEMA will encourage cooperation and partnership between and among Federal, Tribal, State, local governments, and public and private entities.**

Effective homeland security and emergency management require the cooperation, partnership, and mutual consideration of neighboring governments, which include Tribal, State, or local governments. Accordingly, FEMA will encourage partnerships in the interest of implementing effective homeland security and emergency management practices. The Agency's support is not intended to lend Federal support to any one party that would place the interests of another in jeopardy. In these fields, issues are often shared and the principle of partnership between equals and neighbors often serves the best interests of both.

The National Preparedness Task Force is the most recent addition to the Department of Homeland Security's advisory councils established by the Department of Homeland Security Appropriations Act for Fiscal Year 2010. This task force will advise the FEMA Deputy Administrator for Protection and National Preparedness on all aspects of the goals and objectives to improving the Nation's level of preparedness for all hazards (Tribal and local) regarding disaster emergency guidance and policy; including Federal grants and requirements, and performance measurement efforts. The task force includes three tribal representatives.

- **FEMA acknowledges as precedents, the policy commitments and decisions of the Executive, Legislative, and Judicial branches of the United States Government.**

This policy reinforces and incorporates the commitments contained in various Presidential policies emphasizing that such a nation-to-nation relationship be pursued. The Agency's policy also recognizes the 1988 U.S. House of Representatives Concurrent Resolution #331, which

declares the policy "To acknowledge the contribution of the Iroquois Confederacy of Nations... and to reaffirm the continuing nation-to-nation relationship between Indian tribes and the United States established in the Constitution." Further, this policy acknowledges the importance and precedence of treaties, court decisions, statutes, executive orders, and regulations regarding Tribal policy.

- **FEMA will use its best efforts to institutionalize this policy within the fundamental tenets of the Agency's mission.**

FEMA will incorporate the principles of this policy into the Agency's daily activities and operations. This policy is intended to reflect a continuous and long-term planning and management effort.

The Agency also recognizes that one of the best ways to institutionalize this policy is to develop an implementation plan that heightens the Agency's level of meaningful consultation and collaboration with American Indian and Alaska Native tribal governments. FEMA will draft such a plan in consultation with

FEMA's Tribal Working Group with coordination facilitated by FEMA's National Tribal Liaison. The plan will support greater tribal government participation by permitting the National Tribal Liaison to reach out directly to tribal governments and avoid exclusion of some tribes simply because they do not belong to a professional organization. Ultimately, the implementation plan will build upon existing tribal partnerships to promote the safety and security of all people on tribal lands.

As Administrator of FEMA, I have designated a FEMA National Tribal Liaison to serve as our liaison with American Indian and Alaska Native Tribal governments for engagement on policy issues. This policy is subject to annual review based upon lessons learned in the course of its implementation.

RESPONSIBLE OFFICE: Office of External Affairs, FEMA

SUPERSESSION: This policy supersedes the FEMA Tribal Policy published in the Federal Register – January 12, 1999 and all previous guidance on this subject.

REVIEW DATE: This policy does not automatically expire, but will be reviewed every 3 years from the date of publication.

W. Craig Fugate, Administrator