



August 26, 2014

Dear Tribal Leader:

I am pleased to send you the final *Federal Emergency Management Agency (FEMA) Tribal Consultation Policy*. The policy creates a consistent and transparent consultation process that will be applied across the FEMA programs and offices. FEMA is committed to enhancing its government-to-government relationship with federally recognized Indian tribes. It is in the spirit of this commitment that FEMA developed this policy to implement Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments*. This policy establishes a FEMA process for regular and meaningful consultation and collaboration with tribal officials on FEMA actions that have tribal implications.

FEMA received valuable input from tribes in the development of this policy. In October 2013, I sent tribal leaders FEMA's proposed Tribal Consultation Policy and asked for your input. FEMA consulted with tribes on the policy from October 2013 through March 2014. During that time FEMA presented the policy at conferences, in face-to-face consultation meetings, listening sessions, webinars and conference calls, and received many written comments from tribes. Thank you for your participation in the development and refinement of FEMA's Tribal Consultation Policy.

As a part of FEMA's commitment to the tribal consultation process, I am attaching a summary of the major categories of tribal input that FEMA received through consultation including an explanation of how FEMA addressed those comments.

We look forward to working with you to implement this policy moving forward. If you have any questions, please contact Milo Booth, National Tribal Affairs Advisor, at [milo.booth@fema.dhs.gov](mailto:milo.booth@fema.dhs.gov), (202) 212-5184 (office), or (202) 701-4687 (mobile).

Sincerely,

A handwritten signature in blue ink, appearing to read "W. Craig Fugate", is written over a light blue circular stamp.

W. Craig Fugate  
Administrator

Enclosures: FEMA Tribal Consultation Policy  
Summary of Comments Received

**Summary of Comments Received**  
FEMA’s proposed Tribal Consultation Policy

**General Comments**

**Comment: FEMA received input suggesting that we look at the consultation policies of other Federal departments and agencies.**

Response: FEMA looked at the consultation policies of several departments and agencies such as the Department of Homeland Security, the Department of Interior, the Environmental Protection Agency, the Bureau of Indian Affairs, and the Department of Health and Human Services. FEMA incorporated into its policy many of the concepts that appear in the tribal consultation policies of other Federal agencies, including the four phases of consultation: identification, notification, input, and feedback.

**Comment: FEMA received input suggesting that we look at the Environmental Protection Agency as a model for tribal consultation.**

Response: FEMA looked at the Environmental Protection Agency’s Tribal Consultation Policy as a model for FEMA’s Tribal Consultation Policy. FEMA is considering the development of a website similar to the one used by the Environmental Protection Agency to be utilized as a tool in the consultation process.

**Comment: FEMA received input suggesting that the tone and some of the verbiage used in the policy could be more inclusive, positive, definitive, and more true to the spirit of consultation.**

Response: FEMA revised the policy to reflect many of the language changes suggested by tribes. FEMA also strengthened the policy by eliminating the use of the word “should” where applicable.

**Definitions**

**Comment: FEMA received input suggesting that FEMA define the term “FEMA Officials” because the term “Tribal Officials” is defined in the policy.**

Response: FEMA removed the term “FEMA Official” from the policy and replaced it with the more precise terms “Senior Agency Official” or “Tribal Consultation Coordinator.” These two terms are explained in the “Roles and Responsibilities” section of the Tribal Consultation Policy. The term “Tribal Officials” is defined in the Executive Order, and so FEMA included that definition in the policy.

**Comment: FEMA received input suggesting that the term “Action that has tribal implications” be defined more clearly or include language “to make clear that FEMA understands it is what tribes believe has "direct effects" upon tribes and their relationship**

**with the federal government that triggers the consultation requirement, and not necessarily what FEMA thinks has direct effects upon or alters that relationship.”**

Response: The definition of “Action that has tribal implications” is from the definition of “Policies that have tribal implications” in Executive Order 13175. However, FEMA developed a process, as laid out in the Tribal Consultation Policy, which tribes may use to ask FEMA to consult on an action.

### **Roles and Responsibilities**

**Comment: FEMA received input asking for clarity between the former role of the Special Advisor for National Tribal Affairs (SANTA) and the new role of the National Tribal Affairs Advisor (NTAA).**

Response: FEMA is working to ensure that the latest transition from the SANTA position to the new NTAA position is smooth. FEMA recently appointed Mr. Milo Booth, a member of the Metlakatla Indian Community, to the new NTAA position.

The NTAA position, unlike the SANTA position, is a permanent, higher grade position with new responsibilities. The term for the temporary SANTA position ended, and FEMA had the opportunity to make a permanent change to the Agency’s tribal advisor position that better demonstrates FEMA’s long-term commitment to Indian country.

The NTAA is an advisor to the FEMA Administrator and FEMA leadership on tribal issues. The NTAA is a key member of the Tribal Integration Group (TIG). The TIG is an internal coordinating body for tribal-related engagement and consultation across FEMA programs. NTAA helps the TIG undertake fair and comprehensive analysis of the tribal implications of FEMA actions. The NTAA will also work closely with the TIG to implement action items, educate FEMA employees on the Tribal Consultation Policy, and help FEMA programs and offices to work effectively with Indian country. The NTAA will be a key advisor to the program Tribal Consultation Coordinators as they evaluate the impacts of actions on tribes under the FEMA Tribal Consultation Policy. The NTAA will work to strengthen FEMA’s government-to-government relationship with tribes and continue the progress made this past year.

**Comment: FEMA received input that suggested that the NTAA position should not be structured in the Intergovernmental Affairs Division under the Office of External Affairs. Some comments suggested that FEMA should create a separate office for the NTAA that would have a direct line to the Administrator.**

Response: FEMA is in a better position than ever before, organizationally and philosophically, to make gains in our government-to-government relationship with tribes. From the Administrator, to the Director and Deputy Director of External Affairs, to the Director of Intergovernmental Affairs, and now with the new National Tribal Affairs Advisor (NTAA), FEMA has the organizational structure and support for tribes that are needed at every level of leadership. The establishment of the Tribal Affairs Branch within Intergovernmental Affairs, for the first time, places tribal activities into its own branch structure at FEMA, separate from state,

local, and territorial stakeholders. FEMA has added staff to the Tribal Affairs Branch and the entire External Affairs staff has a tribal support mindset.

The NTAA position should not be valued solely by its location in the FEMA organizational chart. The Office of External Affairs reports directly to the Administrator. Because the NTAA is within External Affairs, a variety of tools and resources are available to the NTAA to effectively engage with tribes on a regular basis and assist RTLs in their engagement. The NTAA will take part in decisions, influence policy and legislative efforts, meet with tribal leaders, FEMA senior leadership, Congressional representatives and staff, and represent the goals of FEMA to tribes, seeking their input into how FEMA can continue to strengthen its relationship with federally recognized tribes.

FEMA will continue to work with Indian country to ensure that tribes are being heard. The NTAA is a position of influence within FEMA and has the support of leadership. Because of this, FEMA consultation with tribes will be more effective than ever before.

**Comment: FEMA received input that asked for clarity regarding the role of the Regional Tribal Liaisons and expressed concern that some of the Regional Tribal Liaisons have other duties.**

Response: The day-to-day interaction between the tribes and FEMA is predominantly carried out through engagement with the Regional Tribal Liaisons (RTLs) in each of the nine regions (and area office) that have federally recognized tribes. FEMA acknowledges the importance of this relationship and the expertise that RTLs have on tribal cultures, tribal governance structures, and other tribal issues. FEMA is committed, however, to strengthening the government-to-government relationship with tribes and broadening knowledge of tribal issues among all FEMA staff, not only the RTLs. It is the responsibility of all FEMA staff to recognize the importance of a strong government-to-government relationship with tribes. This was the primary motivation behind the establishment of the TIG and one of the goals of the Tribal Consultation Policy. The TIG is an internal coordinating body for tribal-related engagement and consultation across FEMA programs. Each FEMA program office has a liaison, appointed by senior leadership that reports to the TIG. As contemplated in the Tribal Consultation Policy, each Senior Agency Official will designate a Tribal Consultation Coordinator that will work with the National Tribal Affairs Advisor to ensure that tribes are consulted when FEMA initiates an action that has tribal implications.

FEMA is also working closely with Regional Administrators and RTLs to evaluate the resources in each region so that tribal relationships can be strengthened and issues can be addressed in a timely and accurate manner. FEMA is conducting a survey to assess regional needs and capabilities. FEMA is also meeting with all RTLs to provide training, discuss goals, and identify gaps resources.

### **Identification**

**Comment: FEMA received input that suggested that FEMA outline the process for tribes to request consultation or resolve disputes.**

Response: FEMA revised the policy so that it states that if a tribe would like to request consultation on an action, the tribe should contact the NTAA. Currently, the NTAA is Milo Booth, and he can be reached at [milo.booth@fema.dhs.gov](mailto:milo.booth@fema.dhs.gov), (202) 212-5184 (office), or (202) 701-4687 (mobile). Information on how to contact the Regional Tribal Liaisons is available on FEMA's website at: <http://www.fema.gov/contact-fema-tribal-liaisons>.

**Comment: FEMA received input that the Senior Agency Official will likely be a political appointee with little to no tribal law experience or expertise, particularly if they are early in their agency appointment, and should not be the person analyzing FEMA action to determine if there are tribal implications. FEMA received input that for consistency across changes in Administrations, this should be jointly determined by either the Tribal Consultation Coordinator or a tribal law specialist in OCC and the Senior Agency Official. The most appropriate Senior Agency Official should be the Director of Tribal Affairs (currently NTAA).**

Response: In the Tribal Consultation Policy, Senior Agency Officials and the Tribal Consultation Coordinator consult with the NTAA and OCC when analyzing FEMA actions to determine if there are tribal implications.

**Comment: FEMA received input that the description of “substantial direct effect” did not adequately provide for meaningful consultation. It was suggested that FEMA revise the description of “substantial direct effects” so that tribal consultation occurs where there is a significant impact on tribes, regardless of the impact on other stakeholders.**

Response: FEMA revised the description of “substantial direct effect” to incorporate the recommendation that tribal consultation occur where there is a significant impact on tribes, regardless of the impact on other stakeholders, if those impacts are also direct and caused by the FEMA action.

**Comment: FEMA received input that said that the most effective and meaningful tribal consultation is direct face-to-face communication and discussion, but the commenter stated that they understand that this is not always possible with 566 federally recognized tribes. FEMA received input that the secondary preferred action is to hold regional meetings. FEMA also received input that webinars and conference calls are a great way to reach a large audience for minimal costs, but that it is an ineffective way to reach out to Tribal Leaders. Some commenters said that technology is a great option to reach out to tribes with fewer resources to travel to face-to-face meetings. FEMA also received input that the only way to consult with tribes is face-to-face.**

Response: FEMA appreciates the input it received regarding the method of consultation that is preferred. FEMA is aware that each tribe may have different tribal consultation preferences. That is why the stated preference of tribes affected by an action is one of several factors that FEMA will consider when determining a suitable method of consultation on an action. Other factors that FEMA will consider include: the complexity of the action; the number of tribes impacted; the scope, scale, and degree of the tribal implications; FEMA and tribal time and resource constraints; the stated preference of tribes; the unique cultural sensitivities of Indian tribes; and the technological capabilities of tribes.

**Comment: FEMA received input that stated that according to the policy, FEMA will evaluate agency time and resource constraints in determining what type of consultation is appropriate. FEMA received input that stated that when it comes to upholding FEMA's federal trust responsibility to consult with tribes, agency time, resources, and staff opinion are irrelevant. If there are shortfalls, FEMA should request additional resources for such purposes. The tribes should not bear the burden.**

Response: FEMA is committed to upholding its responsibilities as laid out in E.O. 13175. FEMA and tribal time and resource constraints are one of many factors that FEMA will consider when determining a suitable method of consultation. Other factors that FEMA will consider include: the complexity of the action; the number of tribes impacted; the scope, scale, and degree of the tribal implications; FEMA and tribal time and resource constraints; the stated preference of tribes; the unique cultural sensitivities of Indian tribes; and the technological capabilities of tribes.

**Comment: FEMA received several comments regarding with whom FEMA should consult. Several commenters stated that FEMA should reach out to a tribe's emergency management staff, in addition to the Tribal Leader. FEMA received input that it a complex process to determine with whom to consult and that it requires patience and proper protocol. FEMA received input that Tribal Leaders have a right to delegate their authority to those that they identify as having the knowledge, skills, and abilities to serve their communities.**

Response: Under the E.O. 13175, FEMA has a responsibility to consult with Tribal Officials on actions that have tribal implications. Senior Agency Officials work with the Tribal Consultation Coordinator, the NTAA, and RTLs to identify the Tribal Official or their duly appointed designee. This designee could include the tribe's emergency management or disaster recovery point of contact. RTLs are encouraged to reach out to tribes in their region to foster close working relationships and to maintain an updated list of contacts. FEMA encourages Tribal Officials to notify FEMA, through the NTAA or RTLs, of any preferred point of contacts or designees to ensure that information on consultation is sent to the correct person.

### **Notification**

**Comment: FEMA received several comments that requested that FEMA notify tribes of consultation as early as possible.**

Response: FEMA agrees that tribes should be notified of consultation as early as possible. The Tribal Consultation Policy states that consultation should occur early in the decision-making process to allow tribes the opportunity to provide meaningful input and to give FEMA the opportunity to consider the input. Senior Agency Officials will work with the Tribal Consultation Coordinator, the NTAA, RTLs, and the Office of External Affairs to determine the best time to begin consultation.

**Comment: FEMA received input that tribes would prefer to receive notification of consultation in writing.**

Response: To address this concern, FEMA has revised the Tribal Consultation Policy to state that the Senior Agency Official or Tribal Consultation Coordinator notifies the affected Tribal Official that FEMA is consulting on an action in the form of a letter, typically from the Administrator.

### **Input**

**Comment: FEMA received several comments that stated that the policy should make it clear that FEMA will take tribal input and views into account and incorporate those input and views into the decision-making process.**

Response: FEMA revised the Tribal Consultation Policy to make it clear that when FEMA receives input from Tribal Officials on an action, FEMA will incorporate the input received into FEMA's decision making process.

### **Follow-up**

**Comment: FEMA received input that suggested that FEMA should follow up with tribes that took the time to submit input or participate in consultation. It was suggested that to receive some form of notice, stating the results after a review has taken place, is essential since the final product impacts tribal as well as State and local governments, emergency management, and members of the public.**

Response: FEMA revised the Tribal Consultation Policy to clarify that the Senior Agency Official or Tribal Consultation Coordinator communicates with Tribal Officials and Indian tribes that engaged in the consultation to inform those tribes of FEMA's decision on the action. The preferred method to communicate follow-up with tribes is in writing.