



## FEMA Tribal Policy (Rev. 2)

### FEMA Policy #305-111-1

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#### BACKGROUND

This policy applies to all Federal Emergency Management Agency (“FEMA”) personnel and contractors to include, but not be limited to, permanent and temporary full-time and part-time FEMA employees, FEMA Corps members, Cadre of On-Call Response/Recovery Employees (CORE), and FEMA Reservists.

The FEMA Tribal Policy outlines a commitment by the Agency to enhance its nation-to-nation relationship with federally recognized Indian tribal governments (“Tribal Nations”)<sup>1</sup>, and to ensure FEMA works with Tribal Nations to build, sustain, and improve their capacity to prevent, protect against, mitigate, respond to, and recover from all hazards.

This updated policy supersedes FEMA Policy 305-111-1, FEMA Tribal Policy (December 27, 2016), and all previous guidance on this subject. 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 Nation authority.

#### PURPOSE

This policy establishes how FEMA operates with regard to Tribal Nations and outlines a framework for nation-to-nation relations with Tribal Nations that recognizes tribal sovereignty, self-governance, and upholds the federal government-to-government trust responsibility<sup>2</sup> consistent with applicable authorities listed below under “Additional Information.”

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<sup>1</sup> The Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) uses the term “Indian tribal governments.” See, e.g., Stafford Act § 102(6) [42 U.S.C. 5122(6)] (“The term ‘Indian tribal government’ means the governing body of any Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe under the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a et seq.).”).

<sup>2</sup> The federal government’s trust responsibility to Tribal Nations was first discussed in *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1, 8 L. Ed. 25 (1831), and the Supreme Court has since consistently affirmed this trust responsibility. See, e.g., *United States v. Mitchell*, 463 U.S. 206, 225, 103 S. Ct. 2961, 2972, 77 L. Ed. 2d 580, 596 (1983) (citing *Cherokee Nation* to observe that there is an “undisputed existence of a general trust relationship between the United States and the Indian people”); *United States v. White Mt. Apache Tribe*, 537 U.S. 465, 474, 123 S. Ct. 1126, 1133, 155 L. Ed. 2d 40, 50 (2003) (also citing *Cherokee Nation* and stating: “We have recognized a general trust relationship since 1831.”).



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## PRINCIPLES

- A. FEMA acknowledges the inherent sovereignty of Tribal Nations, the trust responsibility of the federal government, and the nation-to-nation relationship between the U.S. Government and Tribal Nations as established by the U.S. Constitution, statutes, treaties, regulations, court decisions, executive orders, and policies as the foundation of this policy.
- B. FEMA will respect and support the unique status of sovereign Tribal Nations by engaging in meaningful dialogue that will assist tribal communities with any emergency management need that falls under the authority of FEMA.
- C. FEMA will recognize and respect the uniqueness of Tribal Nations, cultures, and communities when building strong and lasting partnerships with Tribal Nations to assist in preparing for all threats and hazards, including those unique to tribal communities.
- D. FEMA will apply its core values of compassion, fairness, integrity, and respect.<sup>3</sup>

## REQUIREMENTS

### A. NATION-TO-NATION RELATIONSHIP

Outcome: FEMA maintains nation-to-nation relationships and engagements with Tribal Nations.

1. FEMA recognizes that the tribal right to self-governance stems from the inherent sovereignty of Tribal Nations; they have a unique and direct relationship with the federal government. Tribal Nations are not political subdivisions of states but are recognized by the United States as distinct sovereign entities.
2. FEMA enlists the support of other federal departments and agencies to further the goals of this policy.
3. FEMA maintains a distinct policy, [FEMA Policy 101-002-02](#), FEMA Tribal Consultation Policy, which guides the Agency process to consult and collaborate with Tribal Nations on the development and implementation of actions that have tribal implications.

### B. CONSIDERATION OF THE UNIQUE CIRCUMSTANCES THAT AFFECT THE GENERAL WELFARE OF TRIBAL NATIONS

Outcome: When considering or implementing FEMA actions, FEMA considers the effects of those actions on the general welfare of Tribal Nations.

1. FEMA will consult with tribal leaders and officials when an agency action has tribal implications under the FEMA Tribal Consultation Policy, which guides the Agency tribal consultation process that reflects the unique circumstances affecting Tribal Nations.
2. The unique circumstances of a tribal community include, but are not limited to, the following: cultural and religious interests; sacred, historical, and cultural sites; resources; preservation; location; infrastructure; and economic status.

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<sup>3</sup> See FEMA, "We Are FEMA" (Pub. 1) (2019), pp. 9-13.



# FEMA

3. FEMA will identify and take reasonable, appropriate steps to eliminate or diminish procedural impediments to working directly and effectively with Tribal Nations. FEMA recognizes there may be legal, procedural, organizational, or other impediments that affect its working relationships with Tribal Nations.

## C. BUILDING TRIBAL CAPACITY

Outcome: FEMA will work in collaboration with Tribal Nations to further develop tribal education and training opportunities.

1. The Agency, in consultation with Tribal Nations, will provide Tribal Nations with information necessary to participate in educational and technical assistance programs to develop, support, and enhance tribal expertise to build, sustain, and improve the capacity to prevent, protect against, mitigate, respond to, and recover from all hazards.
2. The Agency, through its National Tribal Affairs Advisor and the Regional Tribal Liaisons, will work with Agency program staff to develop and structure tribal educational and technical assistance programs to be flexible to the unique circumstances of Tribal Nations (e.g., variation in size, financial circumstances, cultural considerations).

Pete Gaynor  
Administrator

Date



## ADDITIONAL INFORMATION

### REVIEW CYCLE

FEMA Policy 305-111-1, FEMA Tribal Policy, will be reviewed, reissued, revised, or rescinded within four years of the issue date.

### AUTHORITIES

- A. The Homeland Security Act of 2002, as amended (6 U.S.C. 101 *et seq.*).
- B. The 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*.

### REFERENCES

- A. Department of Homeland Security Tribal Consultation Policy.
- B. FEMA Policy 101-002-02, FEMA Tribal Consultation Policy (July 2019).
- C. Presidential Memoranda: "Government-to-Government Relations with Native American Tribal Governments," April 29, 1994; "Government-to-Government Relationship with Tribal Governments," September 23, 2004.

### 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 Nations, or on the distribution of power and responsibilities between the federal government and Tribal Nations.

**Consultation:** Involves the direct, timely, and interactive involvement of tribal governments regarding proposed federal actions that have 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.

**Government-to-Government:** The concept that the relationship between the United States and each Tribal Nation is one between sovereign nations. Also known as "nation-to-nation." See also the definition for "Tribal Sovereignty" below.



# FEMA

**Indian Tribal Government (Tribal Nation):** The governing body of any Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the 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)]. For the purposes of tribal consultation, the term “Indian tribal government” includes Alaska Native Corporations.

**Tribal Sovereignty:** The concept that each Tribal Nation possesses a nationhood status and inherent powers of self-government.<sup>4</sup>

**Trust Responsibility:** A legal obligation of the United States to protect tribal treaty rights, lands, assets, and resources, as well as a duty to carry out the mandates of federal law with respect to Tribal Nations, which have been described as “domestic dependent nations.”<sup>5</sup>

## MONITORING AND EVALUATION

The FEMA National Tribal Affairs Advisor advises the Administrator and other senior Agency leaders on tribal issues and engages Tribal Nations on policy issues from FEMA Headquarters. The FEMA Regional Tribal Liaisons support tribes in each of the ten (10) geographic FEMA Regions across the United States.

The National Tribal Affairs Advisor evaluates national implementation and effectiveness of this policy across directorates, offices, regions, in collaboration with the Regional Tribal Liaisons. Additionally, both the National Tribal Advisor and the Regional Tribal Liaisons will continually monitor FEMA programs and projects that affect tribal interests to ensure any development and implementation is consistent with this policy.

## QUESTIONS

Direct questions to the Office of External Affairs, Congressional and Intergovernmental Affairs Division at [FEMA-Tribal@fema.dhs.gov](mailto:FEMA-Tribal@fema.dhs.gov).

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<sup>4</sup> See U.S. Const. Art. I § 8 (“Congress shall have the right to regulate Commerce with foreign nations and among the several states, and with the Indian tribes.”); *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515, 8 L. Ed. 483 (1832).

<sup>5</sup> *Cherokee Nation*, supra n. 2. See also Bureau of Indian Affairs, Frequently Asked Questions, <https://www.bia.gov/frequently-asked-questions> (citing *Cherokee Nation* and *Seminole Nation v. United States*, 316 U.S. 286, 62 S. Ct. 1049, 86 L. Ed. 1480 (1942)).