

FEDERAL EMERGENCY MANAGEMENT AGENCY

Final Agency Policy for Government-to-Government Relations with American Indian and Alaska Native Tribal Governments

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice; final policy statement.

SUMMARY: This final policy statement has been developed to guide FEMA's interactions with American Indian and Alaska Native Tribal governments in response to a policy memorandum issued by the President on April 29, 1994. President Clinton's memorandum directed agency and department heads to ensure that the Federal Government operates within a government-to-government relationship with Federally recognized Tribal governments. This policy reflects the extensive and insightful comments received over the last twelve months. The comments received and the Agency's response to those comments are contained within an accompanying notice detailing statements of consideration.

EFFECTIVE DATE: September 25, 1998.

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SUPPLEMENTARY INFORMATION: On June 24, 1997, as Director of the Federal Emergency Management Agency (FEMA), I presented a draft Agency policy on American Indian and Alaska Natives to Tribal leaders on the Standing Rock Sioux Reservation. At that time, I encouraged the beginning of a dialogue between FEMA and this nation's first inhabitants on issues associated with emergencies and disasters.

Following that historic meeting, I wrote to the leaders of all of the Federally recognized Tribes, State Governors, State Emergency Management Directors, and national constituency and officials organizations requesting their review and comment on the draft policy. On November 17, 1997, we published the policy in the **Federal Register** for public comment (62 FR 61329). On February 17, 1998, we published another **Federal Register** notice extending the comment period until March 15, 1998 (63 FR 7793). Subsequently, we published an announcement of the Agency's consultation sessions on the draft policy in the **Federal Register** on March 6, 1998 (63 FR 11260).

With the publication today of the final Agency policy, we commit FEMA to the deliberate and thoughtful implementation of this policy. We intend to select not more than five Tribal governments to begin to refine the policy. With the practical experience of working with Tribal governments on emergency management programs, we believe that we can identify and resolve significant programmatic issues, as well as identify any resource and staffing requirements to support this policy. Within one year of the publication of this policy, we shall develop a five-year implementation plan.

The final Federal Emergency Management Agency Policy for government-to-government Relations with American Indian and Alaska Native Tribal Governments follows:

In the face of disasters, the citizens of the United States have historically come together to assist those who have suffered losses. It is in this spirit that the Federal Emergency Management Agency commits itself to building a strong and lasting partnership with American Indians and Alaska Natives to prepare them for the hazards they face, to reduce their disaster vulnerabilities, to respond quickly and compassionately when disasters strike, and to assist them to recover in their aftermath.

Introduction

The Federal Emergency Management Agency recognizes and acknowledges that American Indian and Alaska Native Tribal governments hold a unique status in the United States of America with the rights and benefits of sovereign nations. The Federal Emergency Management Agency has developed this policy to affirm the Agency's understanding, support, and pursuit of a government-to-government relationship with American Indian and Alaska Native Tribal governments.

This policy outlines the guiding principles under which all employees of the Federal Emergency Management Agency are to operate with regard to Federally recognized American Indian and Alaska Native Tribal governments. This policy does not apply to interactions with any other Tribal governments or any other Alaska Native Tribal governments.

The Federal Emergency Management Agency acknowledges the trust 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. The Federal Emergency Management Agency 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 dynamic to provide for the evolution of the partnerships between and among the Federal Emergency Management Agency, Tribal governments, State and local governments, and other Federal agencies. Working within existing statutes and authorities, the Federal Emergency Management Agency will endeavor to be consistent in its dealings with Tribal governments throughout the country.

This policy is consistent with existing law and does not alter or supersede the authorities of the Federal Emergency Management Agency or those of any other Federal departments and 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 the inherent attributes of sovereign Tribal authority to protect Tribal interests and welfare. The Federal Emergency Management Agency has authority to work with Tribal governments concerning emergency management programs under existing law.

Definitions and Terms

Federal Emergency Management Agency

An independent agency of the U.S. Government established by Reorganization Plan No. 3 of 1978, whose employees are subject to the policies and guiding principles contained herein. Also referred to in this document as "the Agency."

Indian Tribe

Means an 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.

Tribal Government

The recognized governing body of an Indian Tribe, band, nation, pueblo, village, or community, including any Alaska Native Village defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688).

Policy Principles

The following policy principles define the commitment of the Federal Emergency Management Agency and its employees to build a strong and lasting partnership with American Indian and

Alaska Native Tribal governments. These principles will serve to guide and direct the Agency's interactions with American Indian and Alaskan Native Tribal governments.

These principles mirror and reinforce the philosophy embodied in President Clinton's April 29, 1994, Memorandum for the Heads of Executive Departments and Agencies entitled "Government-to-Government Relations with Native American Tribal Governments".

The Federal Emergency Management Agency recognizes and commits to a government-to-government relationship with American Indian and Alaska Native Tribal governments.

The Federal Emergency Management Agency recognizes that the Tribal right of self-government flows from the inherent sovereignty of Tribes as nations and that Federally recognized Tribes have a unique and direct relationship with the Federal government.

The Federal Emergency Management Agency will consult, to the extent practicable and 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.

The Federal Emergency Management Agency recognizes that, as a sovereign government, each Tribal government has the right to set 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 neighbors. The Federal Emergency Management Agency will involve Tribal governments in consultations to the extent practicable to seek their input on policies, programs, and issues so that they may evaluate the potential impacts for themselves.

The Federal Emergency Management Agency acknowledges the trust relationship between the Federal Government and 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, the Federal Emergency Management Agency will evaluate to the extent possible the impact of policies, programs, and activities on Tribal trust resources and assure that it considers the rights and concerns of Tribal governments in its decision-making.

The Federal Emergency Management Agency will identify and take appropriate steps to the extent practicable to eliminate or diminish procedural impediments to working directly and effectively with Tribal governments.

The Federal Emergency Management Agency recognizes that there may be legal, procedural, organizational, or other impediments that affect its working relationships with Tribes. To the extent practicable and permitted by law, the Federal Emergency Management Agency will apply the requirements of Executive Order 12875, "Enhancing the Intergovernmental Partnership," and Executive Order 12866, "Regulatory Planning and Review," to design solutions and tailor Agency programs to address specific or unique needs of Tribal governments.

The Federal Emergency Management Agency will work in partnership with other Federal departments and agencies to the extent practicable to enlist their support of cooperative efforts to further the goals of this policy.

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

The Federal Emergency Management Agency will encourage cooperation and partnership between and among Federal, Tribal, State, and local governments to resolve issues of mutual concern related to emergency management.

Effective emergency management requires the cooperation, partnership, and mutual consideration of neighboring governments, whether those governments are neighboring Tribal, State, or local governments. Accordingly, the Federal Emergency Management Agency will encourage pursuing partnerships in the interest of emergency management. The Agency's support is not intended to lend Federal support to any one party to the jeopardy of the interests of another. In the field of emergency management, problems are often shared and the principle of partnership between equals and neighbors often serves the best interests of both.

The Federal Emergency Management Agency acknowledges as precedents the policy commitments and decisions of the executive, legislative, and judicial

branches of the United States Government.

The Federal Emergency Management Agency's policy for government-to-government relations with American Indian and Alaska Native Tribal governments reinforces and incorporates the commitments contained in various Presidential policies emphasizing that such a government-to-government 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 government-to-government 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 without extensive citations.

The Federal Emergency Management Agency will use its best efforts to institutionalize this policy within the fundamental tenets of the Agency's mission.

The Federal Emergency Management Agency will fully and effectively incorporate to the extent practicable all of the principles of this policy into the daily activities and operations of Agency employees. This policy is designed to reflect an ongoing and long-term planning and management effort.

As Director of the Federal Emergency Management Agency, I designate the Preparedness, Training and Exercises Directorate to serve as our liaison with American Indian and Alaska Native Tribal governments on policy issues. Further, each of the Agency's ten regional offices has designated an individual as the focal point for the coordination and implementation of this policy.

This policy is subject to periodic review based upon lessons learned in the course of its implementation. Therefore, as Director of the Federal Emergency Management Agency, I am hereby directing all Agency components and staff to implement this policy by incorporating all of the principles above in their activities, policies, and programs.

Dated: September 25, 1998.

James L. Witt,

Director.

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