

STATEMENT

OF

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BEFORE

THE

COMMITTEE ON INDIAN AFFAIRS  
U.S. SENATE  
WASHINGTON, D.C.

“EMERGENCY MANAGEMENT IN INDIAN COUNTRY: IMPROVING FEMA’S  
FEDERAL-TRIBAL RELATIONSHIP WITH INDIAN TRIBES”

Submitted

By

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## Introduction

Good afternoon, Chairman Hoeven, Vice Chairman Udall, and members of the Committee. I am Alex Amparo, Assistant Administrator with the U.S. Department of Homeland Security's (DHS) Federal Emergency Management Agency (FEMA). Thank you for this opportunity to meet with you today to discuss ways in which FEMA is improving relationships with federally recognized Indian tribes.

FEMA is committed to our partnership and collaboration with federally recognized Indian tribes, and to providing support in their preparation for, protection against, mitigation of, response to, and recovery from all hazards and disasters. FEMA has a strong tradition of engagement with federally recognized Indian tribal governments (tribal governments). However, since the passage of the Sandy Recovery Improvement Act (SRIA) in 2013, the agency has dedicated additional resources to ensuring that tribal governments are fully woven into the fabric of our mission.

Today, I can tell you that FEMA recognizes the unique relationship between Indian Country and the Federal Government, and the unique conditions that affect Indian Country. We work side-by-side with our tribal partners on all aspects of our mission, and we continue to posture ourselves to better support our tribal partners at any time. To reinforce how we recognize these important relationships, I would like to specifically outline FEMA's approach as described in: 1) FEMA's Tribal Policy; 2) FEMA's Tribal Consultation Policy; and, 3) FEMA's Tribal Declaration Pilot Guidance.

### FEMA's Tribal Policy

The U.S. Government has a unique nation-to-nation relationship with federally recognized tribal governments based on the Constitution of the United States, treaties, statutes, executive orders, and judicial decisions. In 2016, FEMA updated its agency-wide tribal policy. The policy outlines a framework for nation-to-nation relations with federally recognized tribal governments that recognizes tribal sovereignty, self-governance, and the general trust relationship, consistent with applicable authorities.

Key principles of our policy include:

- A. Recognizing the unique nature of each tribal community and the need to work with all members of tribal communities, FEMA commits to building strong and lasting partnerships with tribal governments to assist in preparing for all threats and hazards, including those unique to tribal communities.
- B. FEMA will respect and support the unique status of sovereign tribal governments by engaging in meaningful dialogue that will assist tribal communities with any emergency management needs, which fall under the authority of FEMA.
- C. FEMA acknowledges the inherent sovereignty of tribal governments, the general trust relationship with the federal government, and the nation-to-nation relationship between the U.S. Government and tribal governments as established by the U.S. Constitution, statutes, treaties, court decisions, executive orders, regulations, and policies as the foundation of this policy.

In updating this policy, FEMA conducted tribal consultation in 2016, to facilitate tribal feedback on the proposed policy revisions. FEMA held 23 separate events nationwide consisting of 18 regional in-person listening sessions, two national webinars, and three tribal association conference presentations during the tribal consultation period reaching more than 300 tribal participants. FEMA received more than 100 comments in-person and through email, which the agency adjudicated to finalize this revised policy.

For FEMA, this consultation effort on the updated FEMA Tribal Policy represented a significant outreach. To accomplish this FEMA developed structures throughout the agency to support improving our relationships with federally recognized Indian tribal governments. In 2014, FEMA hired a National Tribal Affairs Advisor, Milo Booth (Tsimpshian from the Metlakatla Indian Community in Metlakatla, Alaska), to lead the Tribal Partners Branch (TPB) at FEMA headquarters. In 2016, Margeau Valteau (Navajo from Window Rock, Arizona) joined the TPB as a tribal specialist.

FEMA tribal liaisons, located in our regional offices, are the first resource and point of contact for tribal nations that have questions or require technical assistance on agency programs. Following the federal recognition of the Pamunkey Indian Tribe in 2016, FEMA added a Regional Tribal Liaison to FEMA Region III giving each FEMA regional office at least one tribal liaison supporting tribal affairs. While these tribal liaisons are a critical piece to our outreach and work with tribal governments, it is important to know that all FEMA employees who administer our various programs are available to assist in delivering programs and resources to Indian Country.

In addition to Tribal Affairs staffing, FEMA's Emergency Management Institute (EMI) provides training to tribal governments and their employees to develop their emergency management capabilities. During fiscal year 2016, EMI delivered 55 tribal courses to 763 tribal attendees and 94 other partners. The tribal curriculum courses are delivered by a team of instructors who are selected for their extensive experience working with and for tribal governments in emergency management and the majority of the instructors are tribal members. In addition to providing tribal curriculum courses on the EMI campus in Emmitsburg, Maryland, EMI also provides these courses off-site, traveling out to Indian Country to reach tribal communities directly. EMI currently has planned 21 courses on their 2017 schedule, and will likely increase course deliveries as the year progresses.

FEMA's Center for Domestic Preparedness (CDP) provides training to tribal emergency responders. In fiscal year 2016, CDP hosted its first Tribal Training Week and trained 157 tribal emergency responders from 46 tribal nations. During the week, CDP conducted five courses followed by an operational Integrated Capstone Event full-scale exercise. In 2016, 793 tribal first responders completed courses at the CDP, a 245 percent increase from 2015. This year CDP will host the 2017 Tribal Nations Training Week from March 19 to 25.

### *Exercises*

In addition to providing training, FEMA also coordinates exercises with tribal nations to examine and validate capabilities critical to their readiness.

In September 2015, in Great Falls, Montana, more than 100 people came together to simulate the response to crude oil train derailment on the Blackfeet Nation. FEMA's National Exercise Division coordinated the exercise, Montana Operation Safe Delivery, along with Blackfeet Nation, the State of Montana, and FEMA Region VIII staff. This is one of three in a nationwide series of exercises and the only one to take place on a tribal nation. The goal of the exercise was to examine and confirm the capabilities needed to respond to, reduce the effects of, mitigate the consequences of, and recover from a train derailment involving crude oil. The two-day seminar and tabletop exercise brought together all seven tribal nations in Montana to participate in and learn from a simulated volatile incident.

In June 2016, FEMA Region X conducted a four-day functional earthquake and tsunami exercise, Cascadia Rising. At least 24 tribes in Washington, Oregon, and Idaho participated in various ways ranging from tsunami evacuation drills to full integration in the local Emergency Operations Center. During Cascadia Rising, FEMA exercised its internal capacity to respond to multiple direct disaster declarations from tribal governments.

Tribal participation continues to improve our discussions about pre-landfall hurricane preparedness as well. For the third year in 2016, tribal emergency managers participated in FEMA's annual hurricane preparedness video teleconference with FEMA leadership and state emergency management directors in hurricane-prone areas.

By both providing staff resources at the national and regional level, as well as mission critical training opportunities for tribes, FEMA gains a better understanding of the unique circumstances that affect tribal governments and identifies creative solutions to these unique challenges to better partner with tribal governments and emergency management professionals to serve the needs of disaster survivors.

#### FEMA Tribal Consultation Policy

FEMA's Tribal Consultation Policy governs precisely how we engage Indian tribes in meaningful consultation. It was developed and issued pursuant to E.O. 13175 of November 6, 2000, *Consultation and Coordination with Indian Tribal Governments* and Presidential Memorandum, *Tribal Consultation* (74 Fed. Reg. 57881) that direct agencies to engage in regular and meaningful consultation and collaboration with tribal officials in the development of federal policies that have tribal implications, and to strengthen the government-to-government relationship between the United States and Indian tribes.

The current consultation policy was signed in August 2014, and outlines the specific roles and responsibilities for various FEMA officials, as well as a detailed outline on how consultation is achieved and when it takes place. As a result of this policy, if a tribal government was not consulted on an existing policy or action by FEMA that they determine affects their community or has tribal implications, they may contact the National Tribal Affairs Advisor and request to be a consulting party. Much like how the FEMA Tribal Policy was updated, we anticipate updating the FEMA Tribal Consultation Policy in 2017. We look forward to engaging our tribal partners during the comment period to ensure that our update reflects the evolving needs of Indian Country.

Underlying FEMA's work and mission is the whole community approach that reinforces that FEMA is only one part of our nation's emergency management team. We must leverage all of our collective team resources in preparing for, protecting against, responding to, recovering from, and mitigating against all hazards. Tribal nations are critical components in our whole community, and our commitment to addressing their needs is evident in our strategic priority to be survivor-centric in mission and program delivery. To further survivor-centric outcomes, FEMA leadership adopted a "cut the red tape" posture to focus on the needs of survivors and to develop and execute programs and policies with survivors' perspectives in mind. FEMA recognizes that the consistent participation and partnership of tribal governments is vital in helping FEMA achieve its mission, so an ongoing dialogue with tribal governments and periodic updates of our policies is key to ensuring these goals are met.

#### FEMA's Tribal Declaration Pilot Guidance

On January 29, 2013, President Obama signed into law the Sandy Recovery Improvement Act of 2013 (P.L. 113-2) (SRIA), one of the most significant pieces of legislation impacting disaster response and recovery since the Post-Katrina Emergency Management Reform Act of 2006.

Section 1110 of SRIA, "Tribal Requests for a Major Disaster or Emergency Declaration under the Stafford Act" authorized federally recognized Indian tribal governments (tribal governments) the option to request a Stafford Act emergency or major disaster declaration independent of the state if they chose to do so. As amended, the Stafford Act now better reflects the sovereignty of tribal governments and acknowledges FEMA's nation-to-nation relationship with tribal governments. This new authority also requires the President to "consider the unique conditions that affect the general welfare of Indian tribal governments" when issuing regulations to implement this new authority. FEMA developed a phased implementation to ensure consideration of the unique needs of tribal governments, which are further outlined below.

In consultation with federally recognized tribal governments, we are working thoughtfully and deliberately to develop regulations that best reflect the unique situation of tribal governments. Therefore, FEMA began implementing the new authority in three phases: (1) use of adapted state regulations; (2) implementation of pilot guidance; and (3) final rulemaking.

#### *Immediate Use of Regulations*

Immediately after SRIA's enactment, FEMA used existing state declaration regulations and criteria to process declaration requests from tribal governments. Since the passage of SRIA, there have been eight major disasters declared in Indian Country: The Eastern Band of Cherokee Indians (North Carolina), the Navajo Nation (Arizona, New Mexico, and Utah), the Standing Rock Sioux Tribe (North Dakota and South Dakota), the Karuk Tribe (California), the Santa Clara Pueblo Tribe (New Mexico), which has received two disaster declarations, the Soboba Band of Luiseno Indians (California), and the Oglala Sioux Tribe of the Pine Ridge Reservations (South Dakota). Through these declarations, Public Assistance, Individual Assistance, and Hazard Mitigation Grant Program funding is being provided directly to the tribal governments.

On February 14, 2013, the Eastern Band of Cherokee Indians (EBCI) submitted a request for a declaration due to severe weather which resulted in flooding, road damage, and landslides in the EBCI Qualla Boundary and associated lands. A Major Disaster Declaration was signed on

March 1, 2013, as the first direct federal to tribe disaster declaration under SRIA. The tribe's existing relationship with the state of North Carolina and the FEMA Region IV Tribal Liaison was strengthened and additional connections with FEMA were created during the event. These connections allowed less turmoil for the tribe when performing multiple processes and mission support in an environment of inexperienced applicants. Lessons learned included clarification and guidance regarding policies and procedures on tribal declarations and the need for more cultural awareness by FEMA staff.

In August 2015, the President declared a disaster for the Oglala Sioux tribe as a result of severe storms, straight line winds, and flooding. As part of the assistance made available through the disaster declaration, FEMA and the Oglala Sioux Tribe completed a permanent housing construction mission that delivered 196 manufactured homes, and repaired an additional 107 homes on the tribe's Pine Ridge Indian Reservation. The housing mission was part of the first ever Presidential major disaster declaration for Individual Assistance granted directly to a tribal nation. The agency hired 25 local tribal members to assist in that effort and their roles were vital in the success of the mission. In addition, following the disaster, eleven tribal members joined the FEMA Reservist program.

FEMA gathered critical information, best practices, and process challenges that have informed the development of the *Tribal Declarations Pilot Guidance* that serves as a comprehensive resource for tribal governments on Stafford Act declarations, disaster assistance, and related requirements.

#### *Pilot Guidance Development*

FEMA's disaster declaration regulations were developed to evaluate states' capacity and their need for supplemental disaster assistance. Since these parameters may not be indicative of a tribal nation's ability to respond and recover from a disaster, FEMA augmented its procedures and criteria to reflect the capacity and needs of tribal governments. Before entering the rulemaking process, FEMA intends to utilize the pilot period to inform the development of regulations, ultimately leading to final regulations which reflect the unique needs of tribal governments.

Tribal participation and input was critical to the development of the Tribal Declarations Pilot Guidance. In 2013, FEMA initiated tribal consultation to inform the development of the first draft guidance. FEMA hosted 26 listening sessions nationwide. FEMA sent written correspondence from the FEMA Administrator to all 567 federally recognized tribes, and issued advisories to national and regional tribal organizations and associations to advise them of the consultation. FEMA regional and headquarters leadership presented at numerous tribal conferences to provide an overview of the declaration process and to solicit feedback.

In 2014, FEMA conducted 60 listening sessions around the country, from Northern Alaska to Montana, Oklahoma to Florida, and to Maine with 540 participants and 220 tribes represented. Through these listening sessions, FEMA gathered more than 1,000 comments on the first draft guidance as well as strengthened relationships with tribal governments. We learned more about the challenges that tribal communities face, the response and recovery capabilities of tribal governments, and their understanding of Stafford Act assistance. FEMA regions have been

extremely proactive in meeting consultation requests of Native Alaskan Villages and Indian tribal governments. For instance, FEMA Region X senior staff flew to Alaska to consult with the Aleut Communities of St. Paul and St. George Islands.

The second draft of the guidance was posted to the Federal Register for a 90-day public comment period that ended in April 2016. In addition to posting in the Federal Register, FEMA conducted additional consultation over the 90-day period with over 500 tribal officials representing 178 federally recognized tribal governments through participation in 54 listening sessions nationwide. Nearly 800 comments were received and adjudicated. The final Tribal Declarations Pilot Guidance is a culmination of all of the interaction and feedback through consultation with tribal governments that has occurred over the past several years. In total, FEMA received over 2,000 comments and conducted 140 listening sessions nationwide.

The pilot guidance describes the process by which tribal governments will use to request Stafford Act declarations, during the pilot period, and the criteria FEMA will use to evaluate direct tribal declaration requests and make a recommendation to the President. It is the culmination of over three years of tribal consultation and development of multiple drafts of the guidance. The guidance incorporates key changes based on comments FEMA received from tribes. These changes include the establishment of a Public Assistance minimum damage amount for tribal declarations of \$250,000; the addition of historic preservation as a demographic factor that may influence the impacts of a disaster; expansion of eligibility under the Individuals and Households Program to include non-enrolled tribal community members, when requested by the tribal government; and modifying and adding definitions of terms.

The extensive consultation FEMA conducted with tribal governments in the development of the Tribal Declaration Pilot Guidance was not only valuable in informing what the pilot would look like, but also was invaluable to improving our understanding of the needs and unique characteristics of Indian Country. Additionally, it serves as a good example of FEMA's commitment to improving our relationships with tribal governments.

#### *Additional Ongoing Initiatives to Support Tribal Governments*

The Federal Insurance and Mitigation Administration (FIMA) supports tribal governments by providing direct assistance and support in the development of FEMA approved Hazard Mitigation Plans and guidance in the development of projects for Hazard Mitigation Assistance (HMA) grants. Hazard mitigation planning enables tribal governments to identify risks and vulnerabilities associated with natural disasters, and develop long-term strategies for protecting people and property from future hazard events. FIMA currently uses regional and headquarter resources to provide outreach and technical assistance to tribal governments in support of these activities. FIMA developed guidance documents, outreach materials and provided training opportunities to educate tribal governments in developing hazard mitigation plans and grant applications, and provided technical assistance to tribal governments applying for, and developing HMA Grants for projects including development of hazard mitigation plans. FIMA also developed resources to assist tribal governments with accessing the eGrants System, and applying directly to FEMA for HMA Grants. In the past two years a portion of the Pre-Disaster Mitigation Grant funds have been set-aside for tribal applications. Tribal nations occupy three of

the ten non-FEMA positions on the External Stakeholders Working Group that was formed to increase engagement and transparency with external (non-federal) partners.

In 2016, FIMA conducted tribal consultation on the Tribal Mitigation Planning Guidance that guides agency officials in the interpretation of regulatory requirements in their review and approval of tribal mitigation plans. The underlying regulatory requirements for tribal mitigation planning in 44 CFR Part 201 have not changed. The goal of this update was to simplify and streamline the document, introduce a set of Guiding Principles for Tribal Mitigation Plan Review, and to improve alignment with similar state and local guidance on mitigation planning.

### **Conclusion**

The development and update of FEMA's Tribal Policy, Tribal Consultation Policy, and Tribal Declaration Pilot Guidance shows just part of our commitment to supporting federally recognized tribal governments in their preparation for, protection against, mitigation of, response to, and recovery from all hazards and disasters. The agency continues to seek feedback from our tribal partners and to improve how we can engage and work with them.

We look forward to our continued collaboration to further support tribal governments as they build their emergency management capabilities. Thank you.