

FEDERAL EMERGENCY MANAGEMENT AGENCY

Statement of Considerations of Comments Received on Draft Agency Tribal Policy

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice; statement of considerations of comments received.

SUMMARY: As a demonstration of the consultation process undertaken by FEMA in the course of developing its final Policy on Government-to-Government Relations with American Indian and Alaska Native Tribal Governments, this Statement of Considerations allows interested parties to understand the scope and nature of comments received on the draft policy, as well as the Agency's disposition of these comments.

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SUPPLEMENTARY INFORMATION: FEMA pursued comments on its draft policy on American Indian and Alaska Natives through three avenues: direct correspondence, **Federal Register** publications (62 FR 61329, November 17, 1997, and 63 FR 7793, February 17, 1998), and consultation sessions. We received written comments and recommendations from 66 respondents. In addition, more than 100 individuals participated in the nine consultation sessions organized by FEMA. We incorporated the transcripts of the consultation sessions into the official record of the Agency's interactions on this policy and factored comments and recommendations received through these sessions into the final policy and into this statement of considerations. (A full record of the Agency's policy development process is available for review at FEMA's offices in Washington, D.C.).

Comments received from respondents on the draft policy fall into three categories—policy recommendations (including editorial and content issues); implementation issues; and general statements of support or concern regarding the policy. We address comments received through this process in this statement of considerations. We identify respondents and their recommendations and provide the Agency's response to the comments. We will address relevant issues associated with the implementation of this policy that were identified through this process in programmatic guidance and will provide copies of the issues to all

interested parties. We also made substantial editorial changes recommended for clarity in the course of this policy review.

Section I of this statement of considerations provides general statements regarding the policy and the actions of FEMA in undertaking this effort. Some statements have been abbreviated without impact on their intent or nature. Within Section II of this document, recurrent issues are summarized and a summarized Agency response appears. In the third and final part, we address detailed comments in a section-by-section analysis of the policy. The sections analyzed correspond to the Sections outlined in the draft policy published twice previously in the **Federal Register**. As the direct result of recommended revisions, the final policy sections do not correspond directly with those identified in this statement of considerations.

I. General Statements About the Policy

(Colorado River Indian Tribes) "We appreciate the attention that FEMA is giving to the situation. We applaud and reiterate the concerns expressed in your draft policy document."

(Mni Sose Intertribal Water Rights Coalition, Inc.) "Mni Sose Intertribal Water Rights Coalition expresses appreciation and commends the Federal Emergency Management Agency for its enlightened view of its relationship with Indian Tribes."

(National Congress of American Indians) "NCAI appreciates FEMA's effort and commends the agency for issuing its draft policy to tribal governments for comment. Though the policy is long overdue, we believe that the agency and tribal governments will benefit from a consistent and dedicated collaborative effort, which can result from a formal policy. FEMA has stated that its goal is to create a relationship, which is flexible and dynamic enough to provide for the evolution of partnerships between FEMA and tribal governments. NCAI applauds such a goal."

(Mandan, Hidatsa, and Arikara Nation—Three Affiliated Tribes) "I would like to take this opportunity to thank you on behalf of the Three Affiliated Tribes for providing financial assistance so diligently and expeditiously to our members affected by the winter storms and spring flood of 1997. It was a pleasure to work with a Federal agency that is so efficient and concerned for the well being of people. We look forward to working with you again on any other emergency situations."

(The Confederated Salish and Kootenai Tribes of the Flathead Nation) "The Salish and Kootenai Tribes are encouraged with the drafting of the Indian Policy by FEMA."

(Crow Tribal Council) "We do appreciate FEMA's efforts to develop a partnership which is intended to be flexible and dynamic."

(Douglas Indian Association Tribal Government) "As a Federally Recognized tribe, we appreciate the partnership described in the above document. We also uphold the policy principles."

(Narragansett Indian Tribe) "The only comment that I have for the draft FEMA Native American and Alaska Natives Policy is will this policy solidify what the Narragansett Tribe has in place already with FEMA. Other than that, the policy is very straight forward."

(Prairie Island Indian Community) "We have long been interested in the development of such a policy that would enable your agency to work with our tribe on a government-to-government basis * * * We look forward to the implementation of the policy."

(Division of Special Revenue, Department of Revenue Services, State of Connecticut) "In summary, as long as the FEMA policy is limited to emergency management related issues [that do not conflict with agreements the State has with Tribes] inclusion of interaction with Tribal governments in times of disaster makes sense in coordinating and implementing disaster or emergency preparedness, response and recovery policies."

(Disaster and Emergency Services Division, Department of Military Affairs, State of Montana) "MTDES is glad that FEMA is finally addressing this issue formally and we hope to work in partnership with FEMA in furthering the goals of this policy."

(Bureau of Disaster Services, Military Division, State of Idaho) "I am extremely interested in what effect this new policy will have on the State of Idaho and its people."

(Military Division, State of Idaho) "Both Governor Batt and I will be extremely interested in what effect this new FEMA policy will have on the State of Idaho and its tribes."

(International City/County Management Association) "Overall the principles under which all FEMA employees are to operate when working with American Indian and Alaska Native tribal governments are strong and comprehensive."

(Northern Idaho Agency, Bureau of Indian Affairs, U.S. Department of the

Interior) "FEMA is to be congratulated for this undertaking as it attempts to fulfill the trust responsibility of the United States and its Agencies to deal with and treat with [sic] the several American Indian Tribal Governments."

(Eastern Area Office, Bureau of Indian Affairs, U.S. Department of the Interior) "I would like to commend [FEMA] for their hard work and effort in drafting an Indian Policy Statement which reflects the commitment of the Clinton Administration and FEMA to work with Federally recognized Indian tribes on a government-to-government basis. Congratulations on a job well done."

(Billings Area Office, Bureau of Indian Affairs, U.S. Department of the Interior) "We are encouraged to see FEMA acknowledging its fiduciary relationship and recognizing its trust responsibility to the native people. Hopefully, the draft policy will only be the beginning of a long overdue need to address the quandary Indian people are put in when an emergency arises on the reservations."

(Southern California Agency, Bureau of Indian Affairs, U.S. Department of the Interior) "We encourage FEMA to continue the commitment of a government to government relationship with Federally recognized Tribal governments."

(The Mohegan Tribe) "I have reviewed your [draft policy] and found it to be well thought out and sensitive to the fact the Indian Tribes are governments and should be dealt with as such. The Mohegan Tribe would look forward to working with FEMA pursuant to the terms of the draft policy statement."

(Gila River Indian Community) "A strong cooperative relationship with FEMA would allow the Community to have access to technical expertise and assistance, training and other opportunities as we improve our own emergency management organization."

(Kotlik Traditional Council) "We believe that this policy would serve to enhance the capability of all governments to prepare for and respond to the realistic hazards we face, and to better protect our community when disaster strikes."

(Muskogee Area Office, Bureau of Indian Affairs, U.S. Department of the Interior) "The draft offers the flexibility of meeting the needs of an existing government-to-government relationship between [FEMA] and the tribes."

(Horton Agency, Bureau of Indian Affairs, U.S. Department of the Interior) "The information contained in the draft is a good step forward in working with tribes."

(Office of the Governor, State of New Mexico) "The attempt by FEMA to recognize the need for improvement in the Federal interagency Tribal partnership through improved planning, communication, coordination and cooperation with respect to emergency management is to be commended."

(State of Ohio Emergency Management Agency) "We support your efforts to provide disaster assistance, mitigation activities, preparedness, response and recovery to these Tribal governments."

(Commonwealth of Pennsylvania Emergency Management Agency) "It is important that [FEMA] maintains a partnership with many Tribal governments and ensures a working relationship with them that is consistent among all Tribal governments."

(Commonwealth of Massachusetts Emergency Management Agency) "I have reviewed the draft American Indian and Alaska Native Policy and Massachusetts concurs with the intent and content of the policy."

(Office of the Governor, State of Hawaii) "I commend the efforts to reflect our President's and [FEMA's] commitment to a government to government relationship with Federally recognized tribal governments. Your new proposed policy sets the framework for a spirit of partnership. The end result should be an enhanced capability to prepare for and respond to disasters. In the long run, our communities will be better protected."

(Office of the Governor, State of Wisconsin) "On behalf of the Governor, I concur with the draft policy's overall intent. Governor Thompson is pleased that FEMA has included language which recognizes and encourages the importance of partnership between tribal, state, and local governments to resolve issues of mutual concern relating to emergency management."

(Office of Indian Affairs, Office of the Governor, State of Louisiana) "The state is pleased with this draft and believes it effectively addresses mutual emergency management concerns among tribes, local governments, the state, and the Federal Government."

(Department of Community Affairs, State of Florida) "In the new world of states entering into collaborative "partnerships" with FEMA, it is only natural to establish the same working partnerships with Native Americans. This should have a beneficial impact on future disaster recovery operations involving Native Americans, including the Seminole and Miccosukee Tribes of Florida."

(Office of the Governor, State of Wyoming) "The spirit of the guidelines

and the policy are very consistent with Wyoming's commitment to partnerships and focusing emergency response at the local level."

(Office of the State Fire Marshal, Department of Public Safety and Corrections, State of Louisiana) "I concur with Mr. Witt's belief that problems in emergencies and disasters are often shared and the spirit of partnership between equals and neighbors during these times often serves the interest of both."

(Emergency Management Section, Division of State Police, State of New Jersey) "This office shares your belief that partnerships between individuals and organizations in preparing for and responding to emergency situations can be beneficial to the interests of the partners. [W]e support the spirit of cooperation and commitment FEMA is bringing to its relationship with Native Americans. We feel this cooperation is essential between all levels of government as we work to develop and maintain the best possible capability to respond in time of emergency."

(Office of the Governor, State of Alaska) "The state of Alaska has no objection to adoption of the proposed policy."

(Office of Emergency Management, Department of Local Affairs, State of Colorado) "Colorado is supportive of the policy as stated in the draft, and of the nine underlying policy principles."

(State of Georgia Emergency Management Agency) "While Georgia does not have any American Indian tribes covered under this policy we believe the policy is equitable and especially appreciate your efforts to include members of tribes, state and local governments in planning efforts and to enlist them as partners in the decision making process."

(State of California Governor's Office of Emergency Services) "FEMA has clarified for all native peoples—as well as to the states—that the federal government will make the proper coordination with native peoples a high priority. We support and encourage FEMA's effort to clarify the relationship between Native Americans and the United States government during disasters."

(U.S. Virgin Islands Territorial Emergency Management Agency) "I have reviewed the draft document, and have found it to be a satisfactory partnership agreement."

(Caddo Indian Tribe of Oklahoma) "I want to congratulate you on your initiative to include American Indians and Alaska Natives in the commenting period on your draft. I also want to

thank you for working with the tribes on a government-to-government basis.”

(Mohegan Tribe) “We think that the language in the policy respects the government-to-government relationship. And it certainly reflects that each tribe should decide what’s best for them. It appears by your language that you understand what [sovereignty] is and what our rights are, and that we should expect that FEMA demonstrate that in how they make policy.”

(The Hopi Tribe) “I could not agree with you more that a policy such as this will reinforce the importance of partnership between and among all levels of government.”

(Quinalt Indian Nation) “As a self-governance tribe, Quinalt in particular appreciates your commitment to dealing with tribes on a government-to-government basis. In return for your commitment, the Quinalt Indian Nation pledges to make every effort to establish and promote a cooperative and effective working relationship with FEMA.”

(Pueblo of Zuni) “We look forward to the incorporation of our recommendations into the policy and to a stronger working relationship with FEMA.”

(Fond Du Lac Reservation) “Although no one expects an emergency of the kind requiring us to work with FEMA staff, it is essential that should such an emergency arise, the groundwork for swift and immediate action has been established. The draft policy that we have reviewed would establish this groundwork. We have reviewed the comments of the Prairie Island Indian Community, and the National Congress of American Indians * * * and find they have fully covered our concerns.”

II. Issues of Common Interest

Comment: Many respondents expressed concern about the recurring, ambiguous phrases “where appropriate” and “when appropriate” and recommended alternative language be inserted to reinforce and clarify the intent.

Response: We agree that these statements give the mistaken impression that personal judgments will dictate whether policy principles are honored. In the final policy statement we revised these statements to reflect that these principles will be followed “to the greatest extent practicable and to the extent permitted by law.” This language is consistent with that contained within President Clinton’s April 29, 1994, Policy Memorandum, “Government-to-Government Relations With Native American Tribal Governments,” as well as the congressional policies reflected in

Public Law 93-638, Indian self-determination and Education Assistance Act.

Comment: Several respondents recommended for consistency that wherever “American Indian and Alaska Native governments” appears in the policy that the statement be revised to “American Indian and Alaska Native tribal governments.”

Response: We agree. The final policy reflects these recommendations.

Comment: Several respondents recommended that the definitions of Indian Tribe and Tribal government within the policy be as consistent as possible with definitions contained in existing statutes.

Response: We agree. The final policy reflects these recommendations.

Comment: Several respondents wanted to know whether this policy would allow tribal governments to request disaster declarations directly from FEMA, rather than working through the State.

Response: We understand the interest in the implications for this policy on the administration of the Federal disaster assistance programs. However, the policy is consistent with the existing authorities of the Agency. As we noted in the introductory section of the policy, we do not intend the policy to alter or supersede existing laws. Under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, 42 U.S.C. 5121 et reg., requests for presidential disaster declarations must come from the Governor of the State. Once a declaration has been made, however, Tribal governments have the flexibility to decide between several options for working with FEMA on the administration of disaster assistance programs.

Comment: Some respondents were concerned about how FEMA would make determinations of who is an American Indian for purposes of providing Individual Assistance during a Presidentially declared major disaster or emergency.

Response: Individuals who are legally within this country, regardless of their age, sex, religion, or race, are eligible to receive Individual Assistance from FEMA if they reside within a jurisdiction where the President has declared a major disaster or emergency and is eligible to receive this program’s assistance. This includes American Indians. The Agency’s Tribal policy will not have an impact on current procedures for determining eligibility under this program.

Comment: Some respondents asked whether pre-disaster preparedness funding currently provided to States

and local governments would be reduced as the result of this policy.

Response: Our policy for American Indians and Alaska Natives affirms the government-to-government policy commitments of the Clinton Administration and other legal precedents. The policy focuses on building partnerships with Tribal governments for the development and maintenance of emergency management programs to address the hazards these governments face. The policy outlines the communications philosophy of the Agency with regard to these sovereign nations, yet acknowledges that these interactions will occur within the existing authorities and resources of the Agency. Therefore, we intend through this policy to strengthen the communication and partnership between and among Federal, State, Tribal, and local governments. We intend to build these relationships in cooperation with State and local governments—and not at their expense. Although additional resources may need to be pursued in the future to implement this policy, we do not intend to reduce funding provided to the States and local governments in order to accomplish this.

Comment: On the issue of FEMA’s commitment to a government-to-government relationship, several respondents expressed their concern that Tribal government requests for technical assistance not be subordinated to the will of the State.

Response: As outlined in the policy, we believe that partnership between and among all levels of government is in the interest of disaster mitigation, preparedness, response and recovery. For this reason, we encourage Tribal governments to develop strong working relationships with local and State government entities. We believe that the Agency’s State and local partners possess resources and expertise that could be of great value to tribal governments as they undertake emergency management programs.

Comment: Several respondents were interested in broadening the application of this policy to include State-recognized tribes.

Response: We disagree. Our policy is consistent with the Administration’s policy and remains only applicable to Federally recognized Tribes.

Comment: Several respondents encouraged that FEMA Tribal liaison position be staffed by an American Indian or Alaska Native.

Response: We are sensitive to this concern and interested in employing staff who are representative of the interests we need to serve. At this time,

however, the Agency Tribal Liaison positions in Headquarters and the Regional Offices are an additional duty for existing employees.

Comment: Several respondents were concerned about the short notice of the consultation sessions on the draft Agency policy and the publication of the **Federal Register** Notice after two such sessions had occurred.

Response: FEMA apologizes for the timing of the **Federal Register** notice publication. The Agency wrote to all of the Federally recognized Tribes in advance of the sessions to invite them to attend.

Comments: Several respondents suggested that FEMA present its final policy at the National Congress of American Indians conference this year.

Response: When the policy is final we hope to present and discuss the policy with Tribal government leaders in various forums.

III. Section-By-Section Comments and Recommendations

A. Overall policy

Comment: "[The President's] memorandum should be highlighted as a central supporting document for this policy." (National Congress of American Indians)

Response: We agree and we reorganized the final policy to mirror the form and content of the President's Memorandum for the Heads of Executive Departments and Agencies on "Government-to-Government Relations With Native American Tribal Governments."

Comment: "I would like to take this opportunity to express several concerns regarding the policy as drafted because the policy only addresses federally recognized tribes. If the FEMA policy is adopted, the needs of many state recognized Indian tribes and Indian citizens located in urban and rural communities through the United States will not be addressed." (N.C. Commission of Indian Affairs, Department of Administration, State of North Carolina)

Response: We understand the respondent's concerns, but remain firm in our position that the policy must apply only to Federally recognized American Indian and Alaska Native Tribal governments.

Comment: "The Mni Sose Intertribal Water Rights Coalition recommends that the Federal Emergency Management Agency address the following items as part of its policy to deal with Indian Tribes and Alaska Native Tribes: A. Annual consultation with the Tribes to remain current on tribal preparedness

status and tribal needs in emergency response; B. To maintain a more efficient government-to-government relationship that eliminates or reduces administrative barriers during times of emergencies. In past experiences, Tribes have been required to involve the Bureau of Indian Affairs to receive emergency aid and relief; C. To implement plans between the Federal Emergency Management Agency and tribal governments on matters of training and educational preparedness; D. To assist in securing funding on each reservation or on a regional basis for Tribal emergency and disaster preparedness staff; E. Recognition of disaster declarations as made by Tribes and Alaska Native Tribes through tribal government." (Mni Sose Intertribal Water Rights Coalition).

Response: We are sensitive to the concerns the coalition expressed and will assess these issues as the policy evolves.

Comment: "Indian Nations deserve from FEMA, (in accordance with its trust relationship), treatment at least equal to the support FEMA gives to State and local/county governments for emergency management infrastructure, including: funding for emergency management coordinators, program support services, planning, training personnel, communications, equipment and other standard emergency management program needs. The secondary treatment given to Indian Nations, with set aside grants, is far inferior to the standard emergency management support traditionally and currently being offered to State and county governments. Only true government-to-government relationships, similar to State and local relationships, will meet the emergency management needs of the Indian Nations. Then and only then will the FEMA American Indian and Alaska Native Policy be a standard with real meaning, and FEMA will meet its trust relationship goals." (The Confederated Salish and Kootenai Tribes of the Flathead Nation)

Response: As with the other respondent's concerns, we understand the issues raised but must adhere to existing legislation, regulations and legal opinions.

Comment: "[FEMA] must include policies which will provide more meaningful involvement in protecting cultural and archeology sites. Many tribes have historical ties with archeological sites that require consultation prior to any disturbance. The policy must include policies and procedures which promote priority protection for specific sites in situ, and

arrangements to assure adequate protection of known sites, from future disturbances." (The Confederated Salish and Kootenai Tribes of the Flathead Nation)

Response: We are very sensitive to the concerns expressed by the Tribes and will assess these issues as the policy evolves.

Comment: "We believe it is necessary to follow up on the Policy with: funding for emergency management infrastructure; training and education among non-Indian/non-Alaskan bureaucracies concerning Indian Law and political rights; and goals and objectives designed to implement the Policy." (Disaster and Emergency Services Division, Department of Military Affairs, State of Montana)

Response: We are sensitive to the concerns expressed by the Montana representative and will assess these issues as the policy evolves.

Comment: "This policy, while meeting all the federal criteria for working with the Tribes and recognizing their government status, has the potential for excluding the state and local jurisdiction emergency managers from the American Indian emergency management programs. This is contrary to the way we respond to disasters. Our current approach is based on neighbors helping neighbors, communities helping each other." (Emergency Management Division and Office of Indian Affairs, on behalf of the Office of the Governor, State of Washington)

Response: We believe that cooperation and partnership between and among Federal, State, Tribal, and local governments is essential in emergency management and will emphasize and encourage that relationship. We echo this philosophy in the final policy.

Comment: "We recommend that the policy be revised to require FEMA to consult with all state and federally recognized tribes during natural disaster relief efforts. Furthermore, we recommend that the FEMA policy be modified to require state governments to enter into formal working agreements with Indian tribes to assure that disaster relief efforts reach Indian communities." (N.C. Commission of Indian Affairs, Department of Administration, State of North Carolina)

Response: We will extend consultation only to Federally recognized Tribes. We will also evaluate the need for formal working agreements between States and Indian Tribes on emergency management issues as the policy evolves.

Comment: "Mutual aid assistance agreements between local Federal

agencies (BIA, FEMA, and Tribes) need to be in place. These agreements should also include the state and county emergency management agencies.”

(Wind River Agency, Bureau of Indian Affairs, U.S. Department of the Interior)

Response: We agree that mutual aid is important in response to disasters but view this comment as an implementation issue.

Comment: “After Tribal representatives attended a meeting hosted by FEMA, our optimism was diminished. It became clear that the proposed policy would not establish a true government-to-government relationship. In answer to questions and concerns raised by participants, FEMA representatives admitted that, in fact, implementation of the policy would result in no real change. It would do very little to improve Indian Nation access to emergency assistance or to improve working relationships between Indian Tribes and FEMA.” (Gila River Indian Community)

Response: This final policy does represent a commitment by the Agency to a government-to-government relationship with American Indian and Alaska Native Tribal governments, to the extent legally feasible.

Comment: “[The policy] talks about the interaction between governments and tribal governments, or whatever, but there’s no real details on what is actually going to happen, it’s just a—it’s kind of vague.” (Mashantucket Pequot Tribal Nation)

Response: We understand the respondent’s comment and we commit to the development of materials explaining the nature of specific program relationships with Tribal governments as part of the implementation of this policy.

Comment: Add the following: “All entities residing on, traveling through, or doing business on Indian Lands are hereby put on notice and this information will be sent to the appropriate groups that Indian Lands are not public lands and that the various Indian Nations by virtue of the long standing relationships that have been established among the various Indian Nations and the Federal government interstate commerce that any ingress and egress on Indian Lands even on public highways, railroad lines, air transportation routes, etc. will recognize the sovereign right of the various Indian Nations to regulate and or restrict the use of, and or transportation of hazardous materials and or substances across Indian Lands which could seriously jeopardize the safety and welfare of Native Peoples and others residing throughout the various

Indian reservations in Indian country legally termed ‘Indian Lands.’ This is done in conformance with and in accordance with and in support of previous Federal EPA Laws and regulations which supports and emphasizes Indian rights’ to regulate environmental activities and transportation of hazardous substances across and on Indian Lands.” (Crow Tribal Council)

Response: We believe this comment by the Crow Tribal Council is outside the purview of the policy and we have elected not to include this statement in the final policy.

B. Introduction Section

Comment: “Although the preamble to this policy mentions people coming together in times of disaster, it is important to note that Indian tribes are not just interested in disaster recovery assistance, but also assistance in preparing for, planning for, and training for disasters.” (Prairie Island Indian Community)

Response: We agree and have revised the preamble to reflect the full range of the Agency’s interests and mission.

Comment: “Although some very good principles are cited, they could be stronger and more specific, possibly referring to some of the policy items which should be cited later in the document.” (National Congress of American Indians)

Response: We agree. We revised the Introduction to include the policy principles.

Comment: “The American Indian and Alaska Native tribal governments hold a unique status in the United States with the rights and benefits of [recommend language be inserted:] domestic dependent nations, with governmental authority over both their members and their territory.” (Douglas Indian Association Tribal Government)

Response: Although we elected to retain the original language, we believe that other modifications in the introductory section of the final policy address the Association’s issue.

Comment: “This policy pertains to Federally recognized tribes and provides guidance to employees of the Federal Emergency Management Agency for issues affecting American Indians and Alaska Natives, [recommend language be inserted:] who are members of Federally recognized tribes. Strike next sentence.” (Douglas Indian Association Tribal Government)

Response: We changed this sentence to be consistent with the scope of the policy document, which is to address the Agency’s relationship with American Indian and Alaska Native

Tribal governments rather than to focus on individual Tribal members. We believe it is important to emphasize that this policy does not extend to State-recognized Tribes, and therefore we are retaining this statement in the final policy.

Comment: “Within the Introduction, a sentence in the fourth paragraph regarding working relationships between FEMA and Tribal governments contains the statement, “they will vary according to the legal basis and management requirements for each relationship.” We have no idea what is meant by that statement. If FEMA intends to work with federally recognized tribes on a government-to-government basis, there is no need to vary that basis and therefore the statement should be removed from the sentence.” (Prairie Island Indian Community) and “With regard to working relationships with tribal governments, FEMA states in the Introduction that those relationships “will vary according to the legal basis and management requirements for each relationship.” This statement needs to be clarified since all federally recognized tribes should be treated equally, while keeping in mind the unique needs of each government.” (National Congress of American Indians)

Response: (To both comments) We agree with the concerns. We deleted the original sentence and developed a statement that indicates the Agency’s desire for consistent relationships with Tribal governments within the existing authorities and resources of the Agency.

Comment: “This policy is adopted [recommend language insert:] to support tribal self-government pursuant to and consistent with existing law and does not pre-empt or modify * * *

[recommend language insert:] This policy does not diminish or modify existing tribal government authority in any way. The Federal Emergency Management Agency has the authority to work with tribal governments concerning emergency management programs under existing law.” (Douglas Indian Association Tribal Government)

Response: We modified this language in the final policy in response to this comment.

Comment: “Currently, there exists in the courts, when interpreting Indian Treaties, canons of constructions. The canons of construction provide the courts with a way to interpret Treaties and statutes which provide some certainty in the interpretations. I would recommend that FEMA adopt these canons of construction be used as guidelines for the Agency. By adoption of the canons of construction adopted

by the courts in the FEMA policy no rights will be granted or waived. The cases which developed the canons include the following: *Choctaw Nation v. United States*, 318 U.S. 423, 431-432 (1943); *Choate v. Trapp*, 224 U.S. 665, 675 (1912); *United States v. Walker River Irrigation District*, 104 F. 2d 334, 337 (9th Cir. 1939); *McClanahan v. Arizona State Tax Commission*, 411 U.S. 164, 174 (1973); *Carpenter v. Shaw*, 280 U.S. 363, 367 (1930); *Winters v. United States*, 207 U.S. 564, 576-77 (1908); *Choctaw Nation v. United States*, 397 U.S. 620, 631 (1970); *United States v. Shoshone Tribe*, 304 U.S. 111, 116 (1938); *Jones v. Meehan*, 175 U.S. 1, 11 (1899); *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515, 551-54, 582 (1832).” (Northern Idaho Agency, Bureau of Indian Affairs, U.S. Department of the Interior) and “These are very positive comments, yet, such an important policy statement merits further explanation and supporting law. From the earliest days of this republic, the United States has recognized the unique sovereign status of Indian tribes (*Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1, 17 (1831). The Constitution recognizes tribal sovereignty by classifying Indian treaties among the supreme Law of the land” (Article VI, U.S. Constitution) * * * The citing and inclusion of specific supporting legal principles, such as those cited above, would clarify and emphasize FEMA’s fiduciary role in the government-to-government relationship with American Indian and Alaska Native governments.” (National Congress of American Indians)

Response: (To both comments) We elected not to include these specific citations in the Agency’s final policy. We chose instead to acknowledge generally the body of legal precedents that exist to govern the Federal government’s relationship with Tribal governments.

Comment: “We prefer wording that acknowledges the authority of the Ho-Chunk Nation to govern and administer its own affairs * * * Nor does the policy suggest recognition of tribal authority that does not currently exist beyond the inherent attributes of sovereign tribal authority (and/or any Federal law authority) which permit the exercise of power to protect Tribal interests and advance the general welfare.” (Ho-Chunk Nation Legislature)

Response: We agree with the intent of the proposed language. The final policy reflects this recommendation.

Comment: “Add language pertaining to the cultural differences and sensitivities of American Indian and Alaska Native tribal governments in

reference to the interconnectedness of tribal communities, their customs and religions, and how they view their environment, natural hazards, and tribal lands.” (International City/County Management Association)

Response: We included language in the final policy that is consistent with statements in the President’s policy and addresses the issues that the Association raised.

Comment: “I would also recommend a statement which would repudiate past practices of the Agency, if any, which would run counter to the spirit of this policy.” (Northern Idaho Agency, Bureau of Indian Affairs, U.S. Department of the Interior)

Response: None.

C. Definition Section

Comment: “These definitions are consistent with current policy documents, federal programs, and congressional legislation. Broader definitions are found in other federal initiatives, such as those federal programs which provide services to State recognized tribes; however, FEMA has restricted this policy to federally recognized tribes.” (National Congress of American Indians)

Response: None.

Comment: “Add language explicitly referring to various forms of local government including cities, counties, regional council of governments, townships, [and] special districts.” (International City/County Management Association)

Response: We have incorporated this recommendation in the final policy.

Comment: “Something that is under your definitions * * * We deal with the Bureau of Indian Affairs and Indian Health Services. We have a category * * * which is programs, functions, services, activities and other relationships * * * trying to get consistent terms throughout the government.” (United South and Eastern Tribes)

Response: We agree. We incorporated this language in the definition of “Indian Tribe” in the final policy.

D. Principle on Government-to-Government Relations

Comment: “The Ho-Chunk Nation actively exercises its rights in this regard while at the same time keeping in mind the effect that such exercise has upon its non-tribal residents, relatives, employees, and its neighbors. We propose * * * The Federal Emergency Management Agency further recognizes that each tribal government has the right to set its own priorities and goals for the welfare of its membership, which

includes the considerations tribal governments make to fulfill their responsibilities to their non-tribal residents, relatives, employees, and neighbors, and that the Federal Emergency Management Agency will deal with each tribal government, when appropriate as determined by FEMA, to meet that tribe’s needs.” (Ho-Chunk Nation Legislature)

Response: We agree with much of the recommended language. We made changes in the final policy, remaining mindful of other respondents, concerns about the “when appropriate” phrase.

E. Principle on Acknowledging Policy Precedents

Comment: “FEMA could improve this statement by referring directly to the April 29, 1994 Memorandum which reaffirmed the United States’ unique legal relationship with Native American tribal governments’, directing all executive departments and agencies of the Federal Government that: ‘As executive departments and agencies undertake activities affecting Native American tribal rights or trust resources, such activities should be implemented in a knowledgeable, sensitive manner respectful of tribal sovereignty.’ ” (National Congress of American Indians)

Response: We agree. We revised the policy to reflect these recommendations.

Comment: “Add the word “and” following Iroquois Confederacy of Nations.” (St. Regis Mohawk Tribe)

Response: We agree and made the change.

F. Principle Acknowledging the Trust Relationship

Comment: “The State of Connecticut would be concerned that issues which might affect areas addressed in the Tribal-State Compacts with the Mashantucket Pequot and Mohegan Tribes may not be considered prior to implementing policies that not only affect the Tribal governments but may also have an impact on the State of Connecticut. Consultation with the State of Connecticut should be provided for within the draft policy should areas affecting the State’s relationship with the Tribe be impacted.” (Division of Special Revenue, Department of Revenue Services, State of Connecticut)

Response: We understand the State’s concerns but believe that the consultation we undertake with States is clearly articulated in other Agency policies and regulations and we elected not to modify the final policy.

Comment: Insert following “trust responsibility”, “for American Indian

and Alaska Native tribes." (St. Regis Mohawk Tribe)

Response: We agree and we changed the language in the final policy.

G. Principle on Consultation with Tribal Governments

Comment: "The Ho-Chunk Nation recognizes the rights of a large number of people in addition to its membership. We take into account the effects of Tribal action when such exercise of Tribal authority results in direct and indirect consequences on our non-tribal residents, relatives, employees, and neighbors. We propose * * * The Federal Emergency Management Agency recognizes that, as a sovereign government, the tribe is responsible for the welfare and rights of its membership and also has responsibilities that extend to its non-tribal residents, relatives, employees, and neighbors." (Ho-Chunk Nation Legislature)

Comment: Rerword as follows: "The Federal Emergency Management Agency recognizes that, as sovereign governments, American Indian tribes and Alaska Native governments are responsible for the welfare and rights of their membership." (St. Regis Mohawk Tribe)

Response: We agreed that the policy language needed to be revised. The final policy includes these recommendations.

Comment: "The State should seek a clear understanding of whether or not the entire draft policy is limited to emergency management issues." (Division of Special Revenue, Department of Revenue Services, State of Connecticut)

Response: We want to reassure the Department of Revenue Services that this policy only applies to the interactions of the Agency with American Indian and Alaska Native Tribal governments on emergency management programs.

H. Principle on Partnership Among All Levels of Government

Comment: "We believe such statement sets forth a very laudable goal; cooperation and coordination is a principle which should be supported, and can be attained, once tribes have access to an equal playing field." (National Congress of American Indians)

Response: We agree and believe that this is policy is an important first step.

Comment: "While we fully support this Policy Principle, FEMA must proceed very cautiously. FEMA must always consult with the involved Tribe first. That is, FEMA must not assume that the tribe would want to work with the State or local governments * * * If

a tribe requests a meeting with FEMA or assistance from FEMA it is expected that just FEMA will be involved, unless the Tribe specifically includes other parties." (Prairie Island Indian Community)

Response: We understand the concerns expressed by the community and will be sensitive to these issues.

Comment: Add this sentence at the end of the first paragraph: "Respecting the government-to-government relationship and acknowledging that in some instances it will not be possible to get a full measure of cooperation FEMA is committed to providing the full spectrum of emergency services to Tribes." (Mandan, Hidatsa, and Arikara Nation—Three Affiliated Tribes)

Response: We believe that our stated commitment to a government-to-government relationship suffices, and that the purpose of this principle is to reflect our desire for partnership and cooperation.

Comment: "Are there provisions in any of the regulations or even the Stafford Act to stop funding to States, especially in the State of Arizona where they're discriminating against the Tribe, so FEMA at that point could stop funding to the emergency services office?" (Southern Ute Agency, Bureau of Indian Affairs, U.S. Department of the Interior)

Response: We also are concerned about this issue and will explore the underlying concern for cooperation between and among governments.

Comment: "Delete both occurrences of 'or Indian nations', and 'and Indian Nations.'" (St. Regis Mohawk Tribe)

Response: We agree. We made the change in the final policy.

Comment: "So when you develop these partnership, you need to recognize that this partnership needs to be truly equal and not just for appearance." (Passamaquoddy Tribe)

Response: We acknowledge this comment.

I. Principle on Diminishing Impediments

Comment: "Would State laws or compact provisions be affected under this provision?" (Division of Special Revenue, Department of Revenue Services, State of Connecticut)

Response: We do not intend that this policy affect existing State laws or compact provisions. The final policy incorporates language to address this concern.

Comment: [With regard to Executive Order 12875, entitled 'Enhancing Intergovernmental Partnership, and incorporated by reference in this policy principle, the Executive Order states the

intent to] " * * * increase the availability of waivers to State, local, and tribal governments; and to establish regular and meaningful consultation and collaboration with State, local, and tribal governments * * * Would this apply to funds available to remap the FEMA rate maps (zones) for the NFIP so people can purchase flood insurance?" (Colorado River Indian Tribes)

Response: This is certainly an issue that we need to explore further.

Comment: "It has been our experience that most of the impediments exist at the Regional level." (Prairie Island Indian Community)

Response: All FEMA employees will be familiar with the commitments outlined in the Agency policy.

J. Principle on Working with Other Federal Agencies

Comment: "There are some overlapping sister agencies with existing programs which can assist FEMA in the responsibilities of implementing tribal emergency preparedness programs by providing emergency response training, exercises, and planning. These programs should be identified by FEMA and the agencies contacted by FEMA to provide assistance." (National Congress of American Indians)

Response: We agree. To the extent possible we will work closely with other Federal agencies and departments to identify program areas of mutual interest.

Comment: "We also encourage FEMA to work with other federal departments to resolve the shortcomings related to flood plain delineation. We have concluded that at the border of a reservation existing delineations stop. Without flood plain delineation, building continues in areas that could be flooded out." (Billings Area Office, Bureau of Indian Affairs, U.S. Department of the Interior)

Response: We acknowledge the concerns related to development in flood hazard areas.

Comment: "Presently, the BIA is perceived as responsible for providing assistance to the tribes during urgent situations but uses annual operating funds to provide that assistance. These situations deprive the intended use of those funds from occurring. The Federal government should consider setting up a disaster fund so that money could be made available for disaster preparedness, response, and recovery." (Wind River Agency, Bureau of Indian Affairs, U.S. Department of the Interior)

Response: The Stafford Act is the nation's program for Presidentially authorized disaster assistance with one

Disaster Relief Fund. We will work with BIA on this issue.

K. Principle on Internalizing this Policy

*Comment: "With regard to FEMA's identification of a liaison for Tribal governments], the office or individual selected must be familiar with all elements of FEMA * * * all aspects of emergency management—hazard mitigation, planning, preparedness, recovery, training, exercises, the REP program, and financial." (Prairie Island Indian Community) and "The Ho-Chunk Nation feels that effective coordination is best realized when policy oversight is charged to the Agency that implements policy. Communication between FEMA and the various Tribes will flow more freely if the office or individual coordinating this policy is within FEMA and has access to the operations of the Agency." (Ho-Chunk Nation Legislature)*

Response: (To both comments) FEMA Director Witt asked each of the Agency's ten Regional Directors to appoint a Tribal point of contact to serve as liaison to Tribal governments and to pursue the implementation of this policy. Within the Headquarters, Director Witt charged the Preparedness, Training and Exercises Directorate with coordinating national level liaison and policy implementation efforts. All Agency points of contact are well versed in the scope of FEMA's programs.

Comment: "I would also recommend that the FEMA pursue an aggressive education and training effort for its employees to raise the level of awareness and understanding of the political relationship between the Tribes and the United States . . . The education which too often occurs in on-the-job training when Agency personnel are faced with an issue requiring immediate attention. This method is ineffective and inefficient." (Northern

Idaho Agency, Bureau of Indian Affairs, U.S. Department of the Interior)

Response: We agree that additional employee training may be helpful.

Comment: "FEMA may want to consider developing a protocol for working with tribal officials. Other agencies, such as the Environmental Protection Agency have developed protocols for responding to letters from tribal officials (no more than ten days to respond), visits to the reservation (appropriate program people must be notified), and visits to the regional office (the regional administrator is always available to meet with a tribal chairperson." (Prairie Island Indian Community)

Response: We appreciate these recommendations and promise to explore these suggestions.

L. Principle on the Effective Date of the Policy

Comment: Several respondents suggested that FEMA include tribal representatives on the Agency's working group and/or develop an advisory group of some sort that included tribal members.

Response: We appreciate this recommendation. Consistent with our commitment to consultation on issues that impact Tribal governments, we will pursue all avenues for input and comment on policy development and implementation efforts.

Comment: "Confederated Salish and Kootenai Tribes would like to see in place a plan of action on how a meaningful Indian Policy would be implemented should the policy become reality." (The Confederated Salish and Kootenai Tribes of the Flathead Nation)

Response: We will work to develop a long-term plan within a reasonable amount of time after we make this policy final.

Comment: "I would further recommend development of an internal mechanism which would allow for the policy to find its way into the infrastructure of the Agency by rule and regulation and still provide the flexibility required for offices and staff to refine the policy to meet local and regional needs." (Northern Idaho Agency, Bureau of Indian Affairs, U.S. Department of the Interior).

Response: We agree and believe the process we used to make this policy final meets the need that the Northern Idaho Agency (NIA) identified. The final policy does not include specific discussion of the range of FEMA programs to allow precisely the flexibility that the NIA recommends.

Comment: "As this policy is implemented, the Federal Emergency Management Agency will consider tribal requests for any amendments or revisions necessary to support tribal self-government consistent with the President's Memorandum on Government-to-Government Relations with Native American Tribal Governments." (Douglas Indian Association Tribal Government) and "I would suggest the policy be reviewed on an annual basis to measure the success of its implementation." (Northern Idaho Agency, Bureau of Indian Affairs, U.S. Department of the Interior)

Response: (To both comments) We agree that the periodic review of this policy will assure it flexibility to meet the needs of American Indian and Alaska Native Tribal governments. We included a statement to this effect in the final policy.

Dated: September 25, 1998.

James L. Witt,

Director.

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