

1 **PURPOSE:**

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3 This guidance document directs Federal Emergency Management Agency (FEMA)'s flood
4 hazards studies on land held by Federally Recognized Tribes. This applies to projects in the Risk
5 Mapping, Assessment and Planning (Risk MAP) program and the development of other non-
6 regulatory products. Regional offices should be in close partnership with Federally Recognized
7 Tribes over the lifespan of these projects to create tools that are reflective of the needs of the
8 tribal government. This document establishes consistent national Federal Insurance and
9 Mitigation Administration (FIMA) procedures for the identification and mapping of flood hazard
10 areas on tribal lands. Additionally, it allows for flexibility to better address the diversity of tribal
11 nations and FEMA's evolving mapping program. The goal of the document is honor tribal
12 sovereignty, build equity, and give tribal governments the opportunity to both participate in the
13 Risk MAP program and have access to accurate flood hazard information.

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15 **BACKGROUND:**

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17 The Flood Disaster Protection Act of 1973 (as amended) did not include Federally Recognized
18 Tribes in the definition of community. 42 U.S.C. § 4003(a)(1). In 1976, US Government
19 regulations added Indian Tribes to the definition of community. 44 C.F.R. § 59.1. This revision
20 enabled Tribes to participate in the National Flood Insurance Program (NFIP) and receive
21 benefits of participation such as the availability of flood insurance. However, many Tribes did
22 not have the necessary resources to implement the minimum development criteria required for
23 program participation. As a result, *Federal Insurance Administration (FIA) Policy on Indian*
24 *Tribal Organizations' Participation in the National Flood Insurance Program (FIA-78-1)* was
25 published on February 28, 1978. This stated that a federal flood map would be published for a
26 Tribal Government when the Tribe indicated it was interested in participating in the NFIP. The
27 1978 policy provided guidance for processing NFIP applications related to Tribes' governmental
28 and jurisdictional status. Despite the FIA policy, FEMA did not treat all Tribal Governments
29 consistently during flood hazard studies nor prioritized tribal lands for flood mapping¹. For
30 example, (1) FEMA did not include tribal lands on FIRMs; and (2) FEMA mapped some tribal
31 lands under county jurisdiction (3) FEMA did not properly communicate or coordinate with
32 Federally Recognized Tribes on flood risk studies that may impact their land. With these
33 inconsistencies, many tribes have not been provided the critical flood hazard information FEMA
34 can provide to manage their floodplains, protect their investments, and develop actionable
35 mitigation plans.

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37 **GUIDANCE:**

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39 For the purpose of this guidance, the terms "Indian Tribe," "Tribal Nation," "Alaskan Native
40 Village," or "Tribe" refers to all of the Federally recognized Tribes that the Secretary of the
41 Interior acknowledges to exist under the Federally Recognized Indian Tribe List Act of 1994, 25
42 U.S.C. § 479a, as amended, and the various State recognized tribes under the NFIP definition of

¹ U.S. Government Accountability Office Report GAO-13-226 "Flood Insurance, Participation of Indian Tribes in Federal and Private Programs"

43 community.² 44 C.F.R. § 59.1. Federally recognized Tribes are those entities with a
44 government-to-government relationship with the United States. State recognized Tribes are
45 those whose authorities are derived from a State and are state political subdivisions.

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47 **A. Consultation and Coordination with Tribes**

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49 Tribal governments are an essential part of our nation’s emergency management team. FEMA is
50 committed to supporting tribal nations in its efforts to build more resilient and better prepared
51 communities. To improve the coordination and consultation process with tribal governments
52 during flood hazard mapping, FEMA Regional Offices, in accordance with 101-002-02 (FEMA
53 Tribal Consultation Policy) and Title 44 C.F.R. Part 66, Consultation with Local Officials, will:

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56 Consult directly with Tribal governments throughout the Risk MAP process where flood hazard
57 identification and/or Flood Insurance Rate Map (FIRM) production is occurring as required by
58 FEMA Policy or 44 C.F.R. Part 66. This consultation must be coordinated within the regional
59 Mitigation Division to ensure that during the hazard identification and mapping process, FEMA
60 determines whether the Tribal government agrees to Risk MAP activities occurring on tribal
61 lands.

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64 **B. Flood Hazard Studies**

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66 FEMA Regional offices must follow the agency’s Tribal Consultation Policy for flood hazard
67 studies that have tribal implications. These consultations should follow the life cycle of the
68 mapping process and mirror Risk MAP community meetings. Tribal considerations for
69 Discovery are contained in Guidance for Flood Risk Analysis and Mapping (Section 5.2) dated
70 November 2019. When a Risk MAP project is initiated, all communities in the project area must
71 be identified. The risk factors outlined in FEMA Policy 204-078-1 (Standards for Flood Risk
72 Analysis and Mapping) are used to identify, fund, and develop flood hazard studies for Tribal
73 governments. When scoping new hazard analyses, the FEMA Regional office shall solicit
74 requests from Tribal governments and prioritize these to identify floodplains and support tribal
75 mitigation planning. In accordance with FEMA’s Key Decision Point process, conducting a
76 flood hazard study does not necessarily mean the creation or revision of flood zones on a FIRM.

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79 **C. Flood Insurance Rate Maps**

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81 In consultation with the Tribal government, FEMA Regional offices should identify the tribe’s
82 political boundaries and land use authority to implement minimum flood plain management
83 standards. FEMA makes this determination prior to KDP 1 in the process of developing a new
84 or revised FIRM that may impact a Tribe. If a new project is initiated, FEMA Headquarters may

² Section 59.1 defines “community” as “any State or area or political subdivision thereof, or any Indian tribe or authorized tribal organization, or Alaska Native village or authorized native organization, which has authority to adopt and enforce floodplain management regulations for the areas within its jurisdiction.

85 identify a NFIP Community Identification (CID) number for the tribe, should the tribal nation
86 accept it. Joining the NFIP remains voluntary, and outreach to tribal officials is required during
87 Risk MAP activities.

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89 Federally Recognized Tribes that are members of the NFIP may require additional outreach and
90 coordination to outline the implication of newly mapped floodplain on updated FIRMS.

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92 During the FIRM update process, FEMA must work with the Federally Recognized Tribal
93 government to identify and confirm the tribal political boundaries. FEMA may use Bureau of
94 Indian Affairs data to designate the political boundaries. Should they request it, Federally
95 Recognized Tribal Governments can also request that their political boundaries not be projected
96 on FIRMS.

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98 Tribes with a CID in more than one county are treated as dual-county communities during the
99 FIRM revision process. Should these Federally Recognized Tribes not be included (mapped) on
100 a countywide FIRM they may request that a FIRM specific to that tribal boundary to be created.

101 102 **D. Non-Regulatory Flood Risk Products**

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104 FEMA Regional offices are encouraged to offer and develop non-regulatory flood risk products
105 like Base Level Engineering (BLE) as potential substitutions for FIRMs should a regulatory
106 flood risk product not be acceptable to a tribal government. BLE can also be used as part of the
107 data development phase of the Risk MAP process, to provide a scalable flood risk tool that can
108 preview potential floodplain projects to later be built into a FIRM. If Federally Recognized
109 Tribes are in a study area of a project scoped to Discovery, the decision regarding BLE should be
110 made prior or during Discovery process or at least prior to KDP1 of the Risk MAP Process.

111 112 **E. Assistance with Tribes**

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114 In order to improve outreach and consultation with tribal governments, the Regions should
115 develop a strategy under Risk MAP for contacting all Tribes to introduce FEMA's flood hazard
116 mapping program and explain mitigation planning opportunities. The strategy must outline
117 procedure for outreach to Federally Recognized Tribes that have never been engaged, have
118 already been mapped on a FIRM, and have inadvertently or intentionally been left out of
119 previous mapping projects and consultations. This strategy is independent of the requirements in
120 44 C.F.R. Part 66.

121 122 **F. Next Steps/Developing an Adaptable Approach to the Variation in Tribal Needs and** 123 **Relationships**

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125 This guidance is intended to lay the base for the regulations that govern how we engage and interact with
126 Tribes through the FEMA Risk MAP program. The actual implementation of this with different tribes can
127 vary significantly for a variety of reasons. It is for this reason that a secondary document will be
128 developed to talk through the more detailed, specific steps that can come from a study process. This
129 would be in the form of a best practices/lessons learned document from approaches taken in the past, that
130 future studies can learn from and make more consistent and better informed choices.