ORDER

1210.20

AMERICAN INDIAN AND ALASKA NATIVE TRIBAL CONSULTATION POLICY AND PROCEDURES

January 28, 2004

DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

Distribution: A-WXYZ-1; A-FoF-0 (LTD) **Initiated by:** AEE-200

RECORD OF CHANGES

1210.20

CHANGE TO BASIC	SUPPLEMENTS			OPTIONAL	CHANGE TO BASIC	SUPPLEMENTS			OPTIONAL

FOREWORD

Consistent with the Federal Aviation Administration's mission to be the national and international leader in aviation environmental issues, while fostering a safe, secure, and efficient aviation system, is the need for an effective process to consult with American Indian and Alaska Native Tribes. This order responds to the need for policy and procedures to undertake consultation with American Indian and Alaska Native Tribes in a manner that respects their legal status as sovereign nations. The Department of Transportation (DOT) Order 5301.1 titled "Department of Transportation Programs, Policies, and Procedures Affecting American Indians, Alaska Natives, and Tribes" directs each DOT mode to develop consultation procedures. Order 5301.1 also requires that DOT ensure that all policies and procedures reflect the government-to-government relationship that Federal agencies have with Tribes. Similarly, Presidential Executive Order 13175 titled "Consultation and Coordination With Indian Tribal Governments" directs Federal agencies to establish regular and meaningful consultation and collaboration with tribal officials in developing Federal policies that have tribal implications. Executive Order 13175 also directs Federal agencies to strengthen the United States government-to-government relationships with Indian tribes, and to reduce unfunded mandates imposed on Indian tribes.

This Order provides FAA Assistant and Associate Administrator Organizations with the policy guidance needed to strengthen FAA's government-to-government relationship with Tribes, and the consultation framework to promote meaningful coordination. It is FAA's policy that each Assistant and Associate Administrator Organization will consult with Tribes before taking any actions that may significantly or uniquely affect them. FAA will also use its authorities to help Federally Recognized Tribes in improving their aviation enterprises and provide safe and efficient access to the Nation's transportation system. Further, FAA will foster opportunities in aviation education and research for American Indians and Alaska Natives.

FAA Regional Administrators will appoint Regional Tribal Consultation Officials (RTCOs) to coordinate with lines of business and staff offices in their consultation efforts. A National Tribal Consultation Official (NTCO), found in the Office of Environment and Energy (AEE), will coordinate with RTCOs. The RTCOs will track and record consultations, and provide that information on request to the NTCO who will provide status reports to DOT.

Each office may supplement this broad consultation coverage with guidelines, instructions, or protocol specific to its needs in a manner that is consistent with this Order.

Marion Blakey

Marion C. Blakey
Administrator

1. PURPOSE. This order presents Federal Aviation Administration (FAA) policy for agency programs, policies, and procedures affecting Federally Recognized American Indian and Alaska Native Tribes. This order carries out the relevant consultation provisions of DOT Order 5301.1, Department of Transportation Programs, Policies, and Procedures Affecting American Indians, Alaska Natives, and Tribes, issued November 16, 1999 (Appendix 1). It also complies with Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, issued November 6, 2000 (Appendix 2).

2. DISTRIBUTION. Distribution for this order is to the director level in the Washington headquarters, regions, and centers with a limited distribution to field offices.

3. ACTION. Within 60 days from the date of this order, each Regional Administrator (RA) must provide the Office of Environment and Energy (AEE) with the name of the Regional Tribal Consultation Official (RTCO) as described in 8(b), for their region. RAs should tell AEE-1 of any changes in the RTCO.

4. BACKGROUND. FAA has a history of consultation with American Indian and Alaska Native Tribes when FAA programs and procedures have had an impact on American Indian and Alaska Native concerns. In recent years, many laws, policies, and Executive Orders affecting populations covered by this order have been issued or amended, and these issuances and amendments require agency policies and procedures for consultation with the affected populations. DOT Order 5301.1 identifies many of these laws and policies. It requires each operating administration to establish a point of contact for American Indian and Alaska Native concerns to ensure a ONEDOT approach in developing specific policies and procedures to carry out each law and policy.

5. DEFINITIONS. Definitions are presented in Order DOT 5301.1 (Appendix 1). FAA recognizes that no one term is satisfactory given the diversity of populations within the scope of this order and their political relationship with the Federal government. However, for purposes of this order, the term "Tribe" will be the term used.

"Tribe" means an American Indian or Alaska Native Tribe, Band, Nation, Pueblo, Village, or Community the Secretary of the Interior recognizes as an Indian Tribe under the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

6. AUTHORITY TO CHANGE THIS ORDER.

a. The Administrator reserves the authority to establish or change policy, delegate authority, or assign responsibility as necessary.

b. An FAA organization proposing changes to this order must submit them to AEE. The Director of AEE or their designee will evaluate the changes for incorporation.

c. The Director of AEE has the authority to incorporate changes to this order proposed by FAA organizations after proper coordination with internal and, if necessary, external stakeholders.

7. POLICY.

a. American Indians and Alaska Natives have played an important role in our Nation's history and culture. The Federal government has a unique legal and political relationship with Federally Recognized Tribes, which are domestic dependent nations, subject to the protection of the United States. In turn, the Federal government has a moral duty of the highest responsibility and trust for resources held by the Federal government for Federally Recognized Tribes and their members. The Federal government must act in good faith and loyalty to the best interests of American Indians and Alaska Natives, among these being their interest in self-government. The Department of Interior, Bureau of Indian Affairs maintains the current list of Federally Recognized Tribes.

b. In conducting activities, running programs, and fostering relationships with American Indian and Alaska Native Tribes, to the extent practicable and allowed by law, FAA will:

1. Adhere to the principles of government-to-government consultation, including honoring tribal treaty and other rights, and respect for the right of Federally Recognized Tribes to represent their respective interests;

2. Consult with American Indian and Alaska Native Tribes before taking any actions that may significantly or uniquely affect them. In addition, assure the concerns of Federally Recognized Tribes about potential impacts on trust resources or tribal rights are properly addressed in agency policies, programs, and activities;

3. Respect American Indian and Alaska Native preferences in Federal grants and contracting, subject to eligibility;

4. Ensure nondiscrimination in employment of and service to American Indians and Alaska Natives;

5. Assess the environmental impact of FAA activities on Tribal resources and consider Tribal interests before taking action;

6. Cooperate with the General Services Administration and Bureau of Indian Affairs in identifying to Tribes any FAA owned property subject to disposal;

7. Use FAA authorities, consistent with the ONEDOT approach, to help Federally Recognized Tribes in improving their aviation enterprises and provide safe and efficient access to the Nation's transportation system while strengthening self-government by Federally Recognized Tribes;

8. Respond to the concerns of American Indian and Alaska Native Tribes for environmental justice, children's safety and environmental health risks, occupational health and safety, and other environmental problems;

9. Consult with Federally Recognized Tribes as appropriate and provided by law and policy, on proposed actions that may affect American Indian and Alaska Native ar-

cheological sites, graves, traditional cultural places, and American Indian and Alaska Native sacred sites. And protect where necessary and as allowed by law the confidentiality of information about these historic and archeological sites. Grant access to and ceremonial use of sacred sites on Federal and American Indian and Alaska Native lands, and avoid to the extent practical American Indian and Alaska Native sacred sites when locating and operating FAA facilities;

10. Engage in Departmental efforts to understand and respond to transportation concerns of American Indian and Alaska Native Tribes related to aviation activities. Foster increased awareness by other agencies, state departments of transportation, local aviation authorities, and the aviation industry of these concerns;

11. Foster opportunities in aviation education and research for American Indians and Alaska Natives;

12. Include Tribal colleges and universities in FAA educational, research, and program activities. This may include efforts such as providing FAA personnel as temporary instructors and providing surplus property and equipment as may be allowed by law;

13. Integrate information about Federal law and policies on relations with American Indian and Alaska Native Tribes into agency training and professional development opportunities;

14. Respect sovereignty by asking permission from the Federally Recognized Tribes before entering Tribal lands; and

15. Respond in a timely manner to requests for government-to-government consultations with officials of Federally Recognized Tribes.

8. RESPONSIBILITIES.

a. Office of Environment and Energy. The Office of Environment and Energy (AEE) is responsible for providing DOT with the FAA point of contact (POC) to the Departmental POC established under Order DOT 5301.1. The FAA POC will be known as the National Tribal Consultation Official (NTCO). The NTCO is responsible for coordinating information between the RTCO and Departmental POC. The NTCO will keep a directory of internal points of contact and may set up a network of internal and external contacts and committees consistent with agency guidance on committees. The NTCO and the RTCOs will, as necessary, provide information to Assistant and Associate Administrator Organizations, and take part in activities (for example, conferences and workshops) to improve internal and external awareness of American Indian and Alaska Native concerns. They may also, set up training or engage in training and professional development activities consistent with agency guidance on training. AEE will provide information to the RTCOs and other FAA offices on the agency's American Indian and Alaska Native Consultation Policy and Procedures.

b. Regional Administrators. RAs will name an RTCO for American Indian and Alaska Native concerns in each region, who will cooperate with the NTCO to assure a consistent

agency-wide and ONEDOT approach, and will provide information to the NTCO on request. Each Assistant or Associate Administrator Organization must review and update its policies, procedures, and activities periodically to ensure consistency with this order. If necessary, each Assistant or Associate Administrator Organization may develop more detailed guidance to carry out this order in accord with the applicable procedures and protocol for developing guidance within their respective organizations. Each Assistant or Associate Administrator Organization may supplement the procedures in paragraph 9, as necessary, to set up effective regionally specific consultation procedures. The RTCO will document the procedure and the consultation undertaken to set it up. When developing regionally specific consultation procedures, the

Assistant or Associate Administrator Organization should follow their organization's applicable protocol. Upon request, the NTCO and RTCO will assist with guidance and procedure development. The RTCOs also will keep a list of Federally Recognized Tribes, and their official designees, and an up-to-date record of all consultations initiated with Federally Recognized Tribes. At a minimum, the records must include a description of the consultation and the outcome. The record must show a reasonable good faith effort to get and consider appropriate Tribal input in FAA's decision making.

9. CONSULTATION PROCEDURES. This order provides the general boundaries that each Assistant or Associate Administrator Organization in the regions must follow for consultation and as the framework when developing additional consultation procedures to meet their specific needs and circumstances. For actions that are national in scope, the NTCO will help the affected regions in tailoring the procedures to ensure proper consultation. A clear distinction must be made between the consultation procedures in this order and the agency's public participation process. Consultation does not mean merely the right of American Indians and Alaska Natives, as members of the public, to be consulted or to provide comments under the Administrative Procedures Act or other Federal law of general applicability. Consultation here means a process of government-to-government dialogue between FAA and Tribes on proposed Federal actions in a manner intended to secure meaningful and timely Tribal input. It is vital to the health of the government-to-government relationship that all contacts and consultations with American Indian and Alaska Native Tribes be conducted in a professional and respectful manner and under the following general procedures.

a. Consultation should be initiated by the responsible Assistant or Associate Administrator organization when enough is known about a proposed action to present a coherent proposal and a suggested list of issues to the Tribes. Consultation cannot be useful until enough is known about the proposed action to be able to identify the affected American Indian and Alaska Native Tribes. The affected Tribes should receive timely notice of the planned or proposed Federal action once the agency is able to present a coherent proposal.

b. Verify Tribal representatives who will serve as contacts in the consultation process. Tribal staff must have the Tribal government's authorization to make policy decisions or to take Tribal positions.

c. Tell Tribal representatives of the officials who may make the final FAA decisions on the Federal action. Consultation, including dispute resolution, should be handled at the staff

level in the affected region or headquarters office. Unresolved disputes should move to progressively higher management levels. In resolving disputes, the Regional Administrator will facilitate dispute resolution between the Tribe and FAA regional representatives of the affected Assistant or Associate Administrator organizations. If, after consultation with the Tribe and the FAA regional representatives, the Regional Administrator determines that the dispute cannot be resolved at the regional level, the Regional Administrator will inform the Assistant Administrator for Region and Center Operations (ARC-1) that the dispute will be elevated to headquarters for resolution. ARC-1 will confer with the affected Assistant or Associate Administrator to ensure headquarters representatives engage Tribal representatives in an effort to resolve the dispute. If the Tribe or the affected Assistant or Associate Administrator informs ARC-1 that they have reached an impasse in the dispute resolution process, ARC-1 will prepare a summary of the positions of the Tribe and the affected FAA officials, and present this information with a

recommendation to the Administrator for a decision. If requested, the Administrator will confer with the Tribe and the affected Assistant or Associate Administrator before making the final decision.

d. Provide Tribal representatives with a description of the proposal, a list of issues and impacts, maps, drawings, or any other material or references that can help the interested Tribes to understand what is being proposed. At this stage, the purpose of the information is to enable American Indian and Alaska Native Tribes to make an informed contribution. This information may be provided by mail, facsimile, or whatever means available unless different means are required by law.

e. Conduct consultation with Tribal representatives to identify Tribal interests and concerns, seek input, and examine suggestions on how to effectively address the concerns. To the extent possible, meetings should be held in the affected American Indian or Alaska Native communities. Meetings with Tribal governments should follow protocols appropriate for a government-to-government meeting as determined by the participants and fitting for the nature and scope of the meetings. FAA officials and Tribal officials should be on an equal status in the agenda and meeting facility arrangements.

f. Provide Tribal representatives with suitable feedback to show the interests, concerns, and suggestions have been fully considered by FAA officials making the final decision on the agency's action. Tribal representatives must be advised of the decision on all tribal recommendations and the basis for recommendations not adopted.

APPENDIX 1. DOT 5301.1

ORDER

U.S. Department of Transportation

DOT 5301.1

November 16, 1999

Office of the Secretary of Transportation

SUBJECT: **Department of Transportation Programs, Policies, and Procedures Affecting American Indians, Alaska Natives, and Tribes**

1. **PURPOSE.** To ensure that programs, policies, and procedures administered by the Department of Transportation (DOT) are responsive to the needs and concerns of American Indians, Alaska Natives, and tribes.

2. **REFERENCES.** This list is not all-inclusive but is intended to help in the understanding of this DOT Order.

   a. **Executive Orders and Memoranda:**

      (1) Executive Order 12866, Regulatory Planning and Review (58 Federal Register 51739, October 4, 1993), dated September 30, 1993.

      (2) Executive Order 12875, Enhancing the Intergovernmental Partnership (58 Federal Register 58093, October 28, 1993), dated October 26, 1993.

      (3) Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 Federal Register 7629, February 16, 1994), dated February 11, 1994.

      (4) Executive Order 13007, Indian Sacred Sites (61 Federal Register 26771, May 29, 1996), dated May 24, 1996.

      (5) Executive Order 13021, Tribal Colleges and Universities (61 Federal Register 54929, October 23, 1996) dated October 19, 1996

      (6) Executive Order 13045, Protection of Children from Environmental Health and Safety Risks (62 Federal Register 19885, April 23, 1997) dated April 21, 1997.

      (7) Executive Order 13084, Consultation and Coordination with Indian Tribal Governments (63 Federal Register 27655, May 19, 1998), dated May 14, 1998.

      (8) Executive Order 13096, American Indian and Alaska Native Education (63 Federal Register 42681, August 11, 1998), dated August 6, 1998.

      (9) Policy Concerning Distribution of Eagle Feathers for Native American Religious Purposes, Memorandum for the Heads of Executive Departments and Agencies, signed by the President, April 29, 1994.

      (10) Presidential Memorandum on Government-to-Government Consultation with Native American Tribal Governments (59 Federal Register 22951, May 4, 1994).

      (11) Office of Management and Budget Memorandum M-95-20, September 21, 1995.

b. **DOT Orders:**

(1) DOT 1000.12, Implementation of the Department of Transportation's Title VI Program, dated January 19, 1977.

(2) DOT 1300.1, ONE DOT Management Strategy, dated September 18, 1998.

(3) DOT 1325.2C, DOT Correspondence Policy, dated October 29, 1993.

(4) DOT 5610.1C, Procedures for Considering Environmental Impacts, dated September 18, 1979.

(5) DOT 5610.2, Environmental Justice in Minority Populations and Low-Income Populations, dated April 4, 1997.

c. **Statutes:**

(1) Antiquities Act of 1906, as amended, 16 U.S.C. '' 431-433 (1998).

(2) Historic Sites Act of 1935, 16 U.S.C. '' 461-467.

(3) National Historic Preservation Act of 1966, as amended, 16 U.S.C. '' 470-470w-6.

(4) National Environmental Policy Act of 1969, 42 U.S.C. '' 4321, 4321 note, 4331-4335, 4341-4346b, 4347.

(5) Alaska Native Claims Settlement Act of 1971 (ANCSA), as amended, 43 U.S.C. '' 1601-1629g.

(6) Indian Self-Determination and Education Assistance Act of 1975, as amended, 25 U.S.C. ' 450.

(7) American Indian Religious Freedom Act of 1978, as amended, 42 U.S.C. ' 1996.

(8) Tribally Controlled Community College Assistance Act of 1978, 25 U.S.C. '' 1801-1815.

(9) Navajo Community College Assistance Act of 1978, 25 U.S.C. ' 640a.

(10) Native American Graves Protection and Repatriation Act of 1990, 25 U.S.C. '' 3001-3013.

(11) Federally Recognized Indian Tribe List Act of 1994, as amended, 25 U.S.C. '' 479a and 479-a-1 (63 Federal Register 71941, December 30, 1998).

(12) Tribal Self-Governance Act of 1994, 25 U.S.C. ' ' 458aa - 458hh.

(13) Equity in Educational Land Grant Status Act of 1994, 7 U.S.C. ' 301 note.

(14) Unfunded Mandates Reform Act of 1995, 2 U.S.C. ' ' 602, 658, 658a - 658g, and Chapter 25.

(15) Archeological Resources Protection Act of 1979, as amended, 16 U.S.C. ' ' 470aa - 470mm.

(16) Religious Freedom Restoration Act of 1992, 42 U.S.C. ' ' 2000bb - 2000bb - 4.

(17) Buy Indian Act (as amended 1994), 25 U.S.C. ' 47.

(18) Transportation Act of 1966, as amended 49 U.S.C.' 303 (formerly known as Section 4f).

(19) Intergovernmental Personnel Act 5 U.S.C. ' 4701 (allows temporary employment of tribal government officials) and 42 U.S.C. ' ' 4771- 4772 (authority allowing tribal officials to participate in Federal training)

(20) Title VI of the Civil Rights Act of 1964, as amended 42 U.S.C. § 2000d, et seq.

3. **DEFINITIONS.**

a. **American Indian and Alaska Native**. "American Indian" refers to the term used in the OMB Statistical Policy Directive 15, "Race and Ethnic Standards for Federal Statistics and Administrative Reporting" to identify descendants of the populations indigenous to North America at the time of European discovery. American Indian includes Alaska Natives. "American Indian" however, is commonly used to refer to individuals of such populations residing in the lower 48 States. "Alaska Native" came into use with the passage of the Alaska Native Claims Settlement Act of 1971. Alaska Native is the usage preferred according to results of the Census Bureau's Race and Ethnic Targeted Test (RAETT), included in the Office of Management and Budget's Recommendations from the Interagency Committee for the Review of the Racial and Ethnic Standards to the Office of Management and Budget Concerning Changes to the Standards for the Classification of Federal Data on Race and Ethnicity; Notice and Proposed Request for Comments, 62 Federal Register 36873-36946 (July 9, 1997). Alaska Native refers to Alaskan Indians (including American and Canadian Indians living in Alaska), Eskimo, and Aleut. Note that "Alaska Native" and "American Indian" is not necessarily equivalent to the terms "tribe" and "tribal member." Therefore, since the application of specific statutes and executive orders vary, the definitions contained within these laws should be referred to for additional information.

b. **Consultation**. Refers to meaningful and timely discussion in an understandable language with tribal governments during the development of regulations, policies, programs, plans, or matters that significantly or uniquely affect federally recognized American Indian and Alaska Native tribes and their governments. The specific guidelines and instructions for implementing the Unfunded Mandates Reform Act of 1995 found in OMB Memorandum M-95-20 and the recommendations in the

Presidential Memorandum on Government-to-Government Consultation with Native American Tribal Governments dated April 29, 1994, also provide general principles for intergovernmental consultation under this Order.

c. **DOT Component**. Refers to each agency, office, mode, administration or other entity of the Department of Transportation.

d. **Environmental Justice**. Refers to avoiding, minimizing, and mitigating disproportionately high and adverse effects of DOT policies, programs, and activities on minority populations and low-income populations.

e. **Federally Recognized Tribe**. Refers to the tribal government and tribal members of any tribe, band, pueblo, nation, or other organized group or community including any Alaska Native village or regional or village corporation (as defined in, or established pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 et seq.), or that is acknowledged by the Federal Government to constitute a tribe with a government-to-government relationship with the U.S. and eligible for the programs, services, and other relationships established by the U.S. for Indians because of their status as Indians.

f. **Government-to-Government Relations**. Refers to the protocol for communicating between the Federal Government and tribes as sovereigns in accordance with the Presidential Memorandum on Government-to-Government Consultation with Native American Tribal Governments dated April 29, 1994. The first point of contact should be the Chairman of the Tribal Council or the President of the Tribe.

g. **Indian Preference**. Refers to a preference, typically in employment and contracts, based on the political relationship between the U.S. and members of federally recognized tribes. Indian preference applies only to members of federally recognized tribes and not to individuals who are racially classified as "Indians" but who are not members of federally recognized tribes.

h. **ONE DOT Management Strategy**. Refers to the Department's management strategy and intermodal collaboration that builds on the strengths of DOT modes and the Office of the Secretary of Transportation (OST) to achieve the Department's mission and goals as prescribed in paragraph 2b(2).

i. **Tribe**. The term "tribe," when used in its ethnographical sense to describe a cultural group, does not necessarily confer legal status on a tribe. Therefore, for purposes of this Order, the term "tribe" refers to "Indian tribe" or "Federally recognized tribe" and may also refer to State recognized tribes which are not Federally recognized but which are eligible for certain Federal benefits and privileges under specific Federal laws.

j. **Tribal Colleges and Universities**. Refers to those institutions cited in Section 532 of the Equity in Educational Land Grant Status Act of 1994 (7 U.S.C. 301 note) and any other institution that qualifies for funding under the Tribally Controlled Community College Assistance Act of 1978 (25 U.S.C. 1801 et seq.) and Navajo Community College, authorized in the Navajo Community College Assistance Act of 1978 (Public Law 95-471), Title II (25 U.S.C. 640a note).

k. **Tribal Government**. Refers to the recognized government of a tribe.

l. **Tribal Member**. Refers to a member of a tribe as determined by tribal membership rules.

m. **Tribal Sovereignty**. Refers to the unique legal status of federally recognized Indian tribes as set forth in the U. S. Constitution, treaties, and Federal statutes, executive orders, and court decisions, which establish these tribes, as domestic dependent nations subject to the protection of the U.S. Government. As domestic dependent nations, these tribes exercise inherent sovereign powers over their members and territory unless explicitly removed by Congress.

n. **Trust Resources**. Refers to natural resources such as, but not limited to, water, fish, wildlife, air, minerals, natural gas, oil, forests, plants, land, rivers, cultural resources, that are held in trust by the Federal Government on behalf of the federally recognized tribes.

4. **BACKGROUND.**

a. American Indians and Alaska Natives have a special place in our Nation's history and culture, and certain laws and policies apply to them.

b. The Federal Government has a unique legal and political relationship with federally recognized tribes that have been found by the U.S. Supreme Court to be sovereign, domestic dependent nations, subject to the protection of the United States.

c. The Federal Government has a moral obligation of the highest responsibility and trust for resources held by the Federal Government on behalf of federally recognized tribes and their members, who are properly concerned that trust resources should be conserved for the benefit of present and future generations.

d. The Federal Government, in carrying out its trust responsibility, has the duty to act in good faith and loyalty to the best interests of American Indians, Alaska Natives, and tribes, among these being their interest in self-government and that it is the express policy of Congress and the President to strengthen tribal self-governance.

e. In 1975, Congress passed the Indian Self-Determination and Education Assistance Act (Public Law 93-638). This Act recognized the obligation of the United States to respond to the strong expression of the Indian people for self-determination by assuring maximum Indian participation in the direction of Federal services.

f. On April 29, 1994, a Presidential Memorandum was issued, entitled, "Government-to-Government Relations with Native American Tribal Governments." This Memorandum directed all Executive Departments and Agencies to implement activities affecting Indian tribal rights or trust resources by consulting with tribes in a knowledgeable, sensitive manner respectful of tribal sovereignty.

g. Executive Order 13084, dated May 14, 1998, entitled, @Consultation and Coordination with Indian Tribal Governments,@ directs Federal agencies to work with Indian tribes by: establishing regular and meaningful consultation and collaboration with them on Federal matters that significantly or uniquely affect their communities; reducing the imposition of unfunded mandates on them; and streamlining the application process and availability of waivers to them.

5. **POLICY.** In conducting and administering activities and programs, and fostering relationships with American Indians, Alaska Natives, and tribes, all components within DOT must, to the extent practicable and permitted by law:

a. Carryout DOT's mission, strategic goals, policies, programs, and activities affecting American Indians, Alaska Natives, and tribes in a manner that reflects a high commitment to the ONE DOT management strategy.

b. Consult with Indian tribes before taking any actions that may significantly or uniquely affect them. This process may be supplemented by seeking information from other relevant sources and may be required by specific laws, regulations, and executive orders. This includes, but is not limited to, traditional leaders or elders and associations of tribal officials.

c. Work with federally recognized tribes and their designated representatives on a government-to-government basis respecting their rights to represent their respective interests.

d. Recognize American Indian and Alaska Native statutory preferences in employment, Federal financial assistance arrangements and contracting, subject to eligibility.

e. Assess the environmental impact of DOT activities on tribal trust resources and ensure that tribal interests are considered before DOT activities are undertaken. This assessment must include ensuring that the concerns of federally recognized tribes, regarding the potential impact on trust resources, are properly addressed in agency policies, programs, and activities.

f. Respond effectively to the transportation concerns of American Indians and Alaska Natives related to environmental justice, children's safety and environmental health risks, occupational health and safety, and other environmental matters.

g. Streamline DOT procedures for working directly with tribes on activities that affect trust resources or tribal self-governance of the tribes.

h. Seek tribal representation in relevant DOT sponsored meetings, negotiated rulemaking efforts, forums, advisory committees, listening sessions, focus groups, public surveys, research protocols, and data collection activities.

i. Design solutions and tailor DOT programs as appropriate to address specific or unique needs of tribal communities.

j. Consider opportunities under the Intergovernmental Personnel Act for temporarily hiring tribal members and publicizing eligibility of tribal members to participate in Federal training activities

k. Foster opportunities such as internships, fellowships, scholarships, or other related DOT programs in education and research for American Indians, and Alaska Natives.

l. Include tribal colleges and universities in DOT educational, research, and program activities as prescribed in paragraph 2a(5). This may also include helping the institutions through such activities as providing DOT personnel as temporary instructors and providing surplus property and equipment.

m. Support government-wide educational efforts aimed at American Indian and Alaska Native students such as improving literacy and mathematics skills and increasing high school completion rates.

n. Ensure non-discrimination in employment of and services to American Indians and Alaska Natives.

o. Integrate information about Federal laws and policies on relations with American Indians and Alaska Natives into DOT training.

p. Treat correspondence from leaders of federally recognized tribes in the same manner as congressional correspondence as prescribed in the DOT Correspondence Manual (refer to paragraph 2b(3) of this document).

q. Cooperate with other Federal, State, or local agencies to accomplish government-to-government relations, carryout consultation, address regulatory issues, and solve problems in accordance with the policy objectives above.

6. **RESPONSIBILITIES OF EACH DOT COMPONENT.** In carrying out policies, programs, and activities affecting American Indians, Alaska Natives, and tribes, each DOT component must to the extent practicable and permitted by law:

a. Ensure that an effective mechanism is in place to achieve the following goals:

(1) Improve communication with American Indians, Alaska Natives, and tribes to respond more effectively to their transportation concerns.

(2) Develop an intergovernmental consultation process for that component in coordination with the designated office established under paragraph 7 of this Order.

(3) Adapt processes to recognize American Indian, Alaska Native, and tribal culture and traditions.

(4) Address American Indian, Alaska Native, and tribal transportation issues and concerns under the ONE DOT management strategy.

(5) Ensure consistency within procedures, regulations, and guidance of the various DOT components for addressing American Indian, Alaska Native, and tribal transportation issues.

(6) Maximize cooperation and coordination with the OST, other DOT components, other Federal agencies, and appropriate public and private organizations on transportation matters affecting American Indians, Alaska Natives, and tribes.

(7) Share information about DOT components, programs, activities, and accomplishments as they relate to American Indian, Alaska Native and tribal matters.

(8) Maximize participation of tribal colleges and universities in DOT education, employment, and mission-related programs.

(9) Avoid infringing on tribal lands and accommodate access to and ceremonial use of sacred sites and ancestral burial grounds on Federal and tribal lands to the extent practicable and consistent with essential agency functions.

(10) Invite participation of American Indian, Alaska Native or other tribal employees of DOT to help achieve communication goals.

b. Periodically review efforts to achieve the goals listed in paragraphs 6a(1) through 6a(10) and take appropriate action, as necessary, to improve accomplishment of established goals.

c. Designate a point of contact, experienced in working with tribes or knowledgeable in laws, regulations, and policies regarding federally recognized American Indians, Alaska Natives, and tribes, to serve as a resource for the Department.

7. **DESIGNATED DOT OFFICE.** The Secretary will designate an office to facilitate effective implementation of the policies and requirements of this Order. In this regard, the designated office will advise and make recommendations to the Secretary of Transportation on American Indian, Alaska Native, and tribal policies, issues, programs, and activities. The designated office's mission and responsibilities are further described below.

a. **Mission**. To facilitate a consistent Departmental policy, and strategy relative to American Indian, Alaska Native, and tribal transportation matters to the extent practicable and permitted by law.

b. **Duties**. The designated DOT Office must perform the following duties:

(1) Provide Departmental oversight, guidance, direction, and recommendations to the Secretary and DOT components with regard to implementing this Order and achieving the goals listed in paragraphs 6a(1) through 6a(10) of this Order. This includes providing summary information and/or reports on the Department's efforts as described in paragraph 6b.

(2) Educate DOT employees on American Indian, Alaska Native and tribal laws, policies, programs, activities, culture, and traditions.

(3) Stress the importance of tribal involvement in transportation planning and decision-making.

(4) Ensure tribes' involvement in DOT decision-making that significantly or uniquely affects them.

(5) Encourage direct relationships with the tribes.

(6) Exercise creativity and flexibility in fostering partnerships among the tribes, States, and local governments.

(7) Ensure implementation of the goals listed in paragraphs 6a(1) through 6a(10) of this Order through the following:

(a) **Improve Communication**.

1 Maintain a current directory of DOT programs, including a list of contact persons, for which American Indians, Alaska Natives, and tribes are eligible.

2 Coordinate and promote innovative partnerships among Federal, State, and local government programs and activities that will have the optimal positive effect on American Indians, Alaska Natives, and tribes.

3 Serve on the White House Domestic Policy Council/Native American Subcommittee.

4 Participate in interagency forums on American Indian and Alaska Native issues or concerns.

5 Seek opportunities for training and information exchange via meetings, conferences, workshops, and forums.

6 Facilitate communication and dialogue among Federal, State, tribal representatives, and other government entities.

7 Ensure the DOT website focusing on DOT programs, policies, activities, and issues affecting American Indians, Alaska Natives, and tribes convey the ONE DOT message.

8 Determine through information or recommendations from tribes the best communication channels to disseminate DOT information.

9 Establish a mechanism for initiating contact and providing information about DOT programs, policies, and activities to tribal officials using their preferred protocol.

(b) **Employ the ONE DOT Management Strategy**.

1 Facilitate full and open internal and external communications that allow DOT to speak with one voice concerning American Indian, Alaska Native and tribal transportation concerns.

2 Maintain a point of contact to address, coordinate, and resolve American Indian, Alaska Native, and tribal policy, programs, and activities from a ONE DOT perspective while providing for maximum participation by DOT components and recognizing the unique nature of the programs and operations of each component.

(c) **Improve Regulations and Guidance.**

1 Assist and make recommendations concerning the development, establishment, and maintenance of Departmental American Indian, Alaska Native, and tribal policy, guidance, procedures and regulations.

2 Participate in Department-wide review and resulting modification of existing regulations affecting American Indian, Alaska Natives, and tribes.

This Order is intended to improve the internal management of the Department, consistent with paragraph 1 of this Order, and is not intended to create any right enforceable in any cause of action by any party against the U.S., its agencies, officers or any person. In addition, this Order should not be construed to create any right to judicial review involving the compliance or noncompliance with this Order by the Department, its operating administrations, its officers, or any other person.

Original signed by
SECRETARY OF TRANSPORTATION

Rodney E. Slater

APPENDIX 2. EXECUTIVE ORDER 13175

PURPOSE: This memorandum is one of a series intended to notify appropriate offices and organizations within the Department about the President's issuance of an Executive Order (E.O.) that may affect our responsibilities and operations.

OFFICE OF PRIMARY RESPONSIBILITY: It appears that the Office of Intergovernmental Affairs (I-20) is the Office of Primary Responsibility for E.O. 13175, Consultation and Coordination with Indian Tribal Governments.

SUMMARY OF THE EXECUTIVE ORDER AND ITS APPLICABILITY: Executive Order 13175 was issued November 6, 2000, in order to establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, to strengthen the United States government-to-government relationships with Indian tribes, and to reduce the imposition of unfunded mandates upon Indian tribes. Executive Order 13084 (Consultation and Coordination with Indian Tribal Governments) is revoked at the time E.O. 13175 takes effect (60 days from November 6, 2000).

Section 2. This section sets forth the fundamental principles that will guide the Department in formulating or implementing policies that have tribal implications. Specifically, the United States has a unique legal relationship with Indian tribal governments, has recognized Indian tribes as domestic dependent nations under its protection, and has numerous statutes and regulations that establish and define a trust relationship with Indian tribes. The United States, in accordance with treaties, statutes, Executive Orders, and judicial decisions, has recognized the right of Indian tribes to self-government. As domestic dependent nations, Indian tribes exercise inherent sovereign powers over their members and territory. The United States recognizes the right of Indian tribes to self-government and supports tribal sovereignty and self-determination.

Section 3. In fulfilling the fundamental principles specified, this section directs the Department to adhere, to the extent permitted by law, to the following criteria when formulating and implementing policies that have tribal implications:

(a) Agencies shall respect Indian tribal self-government and sovereignty, honor tribal treaty and other rights, and strive to meet the responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments.

(b) With respect to Federal statutes and regulations administered by Indian tribal governments, the Federal Government shall grant Indian tribal governments the maximum administrative discretion possible.

(c) When undertaking to formulate and implement policies that have tribal implications, agencies shall encourage Indian tribes to develop their own policies to achieve program objectives; where possible, defer to Indian tribes to establish standards; and, in determining whether to establish Federal standards, consult with tribal officials as to the need for Federal standards and any alternatives that would limit the scope of Federal standards or otherwise preserve the prerogatives and authority of Indian tribes.

Sections 4 and 5. There are special requirements for the Department's legislative and regulatory proposals under this section. First, agencies shall not submit to Congress legislation that would be inconsistent with the policymaking criteria in Section 3, and section 7 of the E.O. requires the Department to include in each transmittal a certification from the official designated to ensure compliance with the E.O. that all relevant requirements of the Order have been met. Second, for promulgation of regulations, the requirements closely parallel the existing "Federalism" requirements that are already required under a separate E.O, including a certification for individual rules that the requirements of this order have been met in a meaningful and timely manner.

Section 5 also requires the Department to develop an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications, and to designate an official with principal responsibility for the agency's implementation of E.O. 13175. The designated official (the Director of the Office of Intergovernmental Affairs) must submit to the Office of Management and Budget (OMB) a description of the agency's consultation process.

On issues relating to tribal self-government, tribal trust resources, or Indian tribal treaty and other rights, each agency should explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking.

Section 6. Under this section, agencies shall review the processes under which Indian tribes apply for waivers of statutory and regulatory requirements and take appropriate steps to streamline those processes. Each agency shall, to the extent practicable and permitted by law, consider any application by an Indian tribe for a waiver of statutory or regulatory requirements in connection with any program administered by the agency with a general view toward increasing opportunities for utilizing flexible policy approaches at the Indian tribal level in cases in which the proposed waiver is consistent with the applicable Federal policy objectives and is otherwise appropriate. This section applies only to statutory or regulatory requirements that are discretionary and subject to waiver by the agency.

For your information, a copy of E.O. 13175 is appended. The order was signed and issued on November 6, 2000. Please direct any questions or requests for interpretation of the Executive Order to the OPR.

THE WHITE HOUSE

EXECUTIVE ORDER

13175

CONSULTATION AND COORDINATION WITH INDIAN TRIBAL GOVERNMENTS

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, to strengthen the United States government-to-government relationships with Indian tribes, and to reduce the imposition of unfunded mandates upon Indian tribes; it is hereby ordered as follows:

Section 1. Definitions. For purposes of this order:

(a) "Policies that have tribal implications" refers to regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

(b) "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 pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

(c) "Agency" means any authority of the United States that is an "agency" under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).

(d) "Tribal officials" means elected or duly appointed officials of Indian tribal governments or authorized intertribal organizations.

Sec. 2. Fundamental Principles. In formulating or implementing policies that have tribal implications, agencies shall be guided by the following fundamental principles:

(a) The United States has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions. Since the formation of the Union, the United States has recognized Indian tribes as domestic dependent nations under its protection. The Federal Government has enacted numerous statutes and promulgated numerous regulations that establish and define a trust relationship with Indian tribes.

(b) Our Nation, under the law of the United States, in accordance with treaties, statutes, Executive Orders, and judicial decisions, has recognized the right of Indian tribes to self-government. As domestic dependent nations, Indian tribes exercise inherent sovereign powers over their members and territory. The United States continues to work with Indian tribes on a

government-to-government basis to address issues concerning Indian tribal self-government, tribal trust resources, and Indian tribal treaty and other rights.

(c) The United States recognizes the right of Indian tribes to self-government and supports tribal sovereignty and self-determination.

Sec. 3. Policymaking Criteria. In addition to adhering to the fundamental principles set forth in section 2, agencies shall adhere, to the extent permitted by law, to the following criteria when formulating and implementing policies that have tribal implications:

(a) Agencies shall respect Indian tribal self-government and sovereignty, honor tribal treaty and other rights, and strive to meet the responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments.

(b) With respect to Federal statutes and regulations administered by Indian tribal governments, the Federal Government shall grant Indian tribal governments the maximum administrative discretion possible.

(c) When undertaking to formulate and implement policies that have tribal implications, agencies shall:

(1) encourage Indian tribes to develop their own policies to achieve program objectives;

(2) where possible, defer to Indian tribes to establish standards; and

(3) in determining whether to establish Federal standards, consult with tribal officials as to the need for Federal standards and any alternatives that would limit the scope of Federal standards or otherwise preserve the prerogatives and authority of Indian tribes.

Sec. 4. Special Requirements for Legislative Proposals. Agencies shall not submit to the Congress legislation that would be inconsistent with the policymaking criteria in Section 3.

Sec. 5. Consultation. (a) Each agency shall have an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications. Within 30 days after the effective date of this order, the head of each agency shall designate an official with principal responsibility for the agency's implementation of this order. Within 60 days of the effective date of this order, the designated official shall submit to the Office of Management and Budget (OMB) a description of the agency's consultation process.

(b) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications, that imposes substantial direct compliance costs on Indian tribal governments, and that is not required by statute, unless:

(1) funds necessary to pay the direct costs incurred by the Indian tribal government or the tribe in complying with the regulation are provided by the Federal Government; or

(2) the agency, prior to the formal promulgation of the regulation,

(A) consulted with tribal officials early in the process of developing the proposed regulation;

(B) in a separately identified portion of the preamble to the regulation as it is to be issued in the Federal Register, provides to the Director of OMB a tribal summary impact statement, which consists of a description of the extent of the agency's prior consultation with tribal officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met; and

(C) makes available to the Director of OMB any written communications submitted to the agency by tribal officials.

(c) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications and that preempts tribal law unless the agency, prior to the formal promulgation of the regulation,

(1) consulted with tribal officials early in the process of developing the proposed regulation;

(2) in a separately identified portion of the preamble to the regulation as it is to be issued in the Federal Register, provides to the Director of OMB a tribal summary impact statement, which consists of a description of the extent of the agency's prior consultation with tribal officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met; and

(3) makes available to the Director of OMB any written communications submitted to the agency by tribal officials.

(d) On issues relating to tribal self-government, tribal trust resources, or Indian tribal treaty and other rights, each agency should explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking.

Sec. 6. Increasing Flexibility for Indian Tribal Waivers.

(a) Agencies shall review the processes under which Indian tribes apply for waivers of statutory and regulatory requirements and take appropriate steps to streamline those processes.

(b) Each agency shall, to the extent practicable and permitted by law, consider any application by an Indian tribe for a waiver of statutory or regulatory requirements in connection with any program administered by the agency with a general view toward increasing opportunities for utilizing flexible policy approaches at the Indian tribal level in cases in which the proposed waiver is consistent with the applicable Federal policy objectives and is otherwise appropriate.

(c) Each agency shall, to the extent practicable and permitted by law, render a decision upon a complete application for a waiver within 120 days of receipt of such application by the agency,

or as otherwise provided by law or regulation. If the application for waiver is not granted, the agency shall provide the applicant with timely written notice of the decision and the reasons therefore.

(d) This section applies only to statutory or regulatory requirements that are discretionary and subject to waiver by the agency.

Sec. 7. Accountability.

(a) In transmitting any draft final regulation that has tribal implications to OMB pursuant to Executive Order 12866 of September 30, 1993, each agency shall include a certification from the official designated to ensure compliance with this order stating that the requirements of this order have been met in a meaningful and timely manner.

(b) In transmitting proposed legislation that has tribal implications to OMB, each agency shall include a certification from the official designated to ensure compliance with this order that all relevant requirements of this order have been met.

(c) Within 180 days after the effective date of this order the Director of OMB and the Assistant to the President for Intergovernmental Affairs shall confer with tribal officials to ensure that this order is being properly and effectively implemented.

Sec. 8. Independent Agencies. Independent regulatory agencies are encouraged to comply with the provisions of this order.

Sec. 9. General Provisions. (a) This order shall supplement but not supersede the requirements contained in Executive Order 12866 (Regulatory Planning and Review), Executive Order 12988 (Civil Justice Reform), OMB Circular A-19, and the Executive Memorandum of April 29, 1994, on Government-to-Government Relations with Native American Tribal Governments.

(b) This order shall complement the consultation and waiver provisions in sections 6 and 7 of Executive Order 13132 (Federalism).

(c) Executive Order 13084 (Consultation and Coordination with Indian Tribal Governments) is revoked at the time this order takes effect.

(d) This order shall be effective 60 days after the date of this order.

Sec. 10. Judicial Review. This order is intended only to improve the internal management of the executive branch, and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the United States, its agencies, or any person.

Original signed by
WILLIAM J. CLINTON

THE WHITE HOUSE, November 6, 2000.

U.S. Department
of Transportation
Federal Aviation Administration

Memorandum

Subject: Guidance - Federal Aviation Administration Order 1210.20 "American Indian and Alaska Native Tribal Consultation Policy and Procedures"

Date: FEB 18 2004

From: Carl Burleson
Director, Office of Environment and Energy

Reply to Attn. of:

To:

Purpose

This guidance accompanies the Federal Aviation Administration (FAA) Order 1210.20, "American Indian and Alaska Native Tribal Consultation Policy and Procedures." It's intended to answer the most frequently asked questions (FAQ's) about carrying out the Order.

FAQ's

Q.1 Why was this Order developed?

A.1 The Office of Environment and Energy prepared FAA Order 1210.20, with the help of an Intraagency work group, in response to an Order issued by the Department of Transportation (DOT). DOT issued the Order, titled "Department of Transportation Programs, Policies and Procedures Affecting American Indian, Alaska Native, and Tribes" (Order 5301.1), November 6, 1999. Among other things, DOT Order 5301.1 requires all DOT operating Administrations to name a point of contact for American Indian and Alaska Native affairs to serve as a resource to the Department. It also requires the Administrations to develop an intergovernmental consultation process to improve communication with Tribes. This FAA Order responds to those relevant consultation provisions.

FAA Order 1210.20 also complies with Executive Order (EO) 13175, "Consultation and Coordination with Indian Tribal Governments." EO 13175 directs all Federal agencies "to establish an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." Although FAA organizations have sought-out Tribal input at different times for different reasons, the intent of this Order is to recognize the need for consultation throughout the FAA, and consistently conduct and document future consultations. Consultation is different from normal public involvement, and sometimes will require more effort than FAA organization's current practices. The Order considers the uniqueness of each FAA region, and the diversity among Federally Recognized Tribes (see 67 FR 46327 or the latest FR listing by the Department of Interior, Bureau of Indian Affairs). It provides the maximum amount of regional flexibility with implementation while still meeting the requirements of the Orders mentioned above.

Q.2 Who is affected by this Order?

A.2 All FAA organizations will be affected by this Order. In particular, organizations that develop policy, directives (notices, rules, and regulations), and undertake actions (project and program implementation) that directly impacts Federally Recognized Indian Tribes will be affected.

Throughout the Order, the term Assistant or Associate Administrator Organization is used to describe the official organizational structure of FAA. In the popular vernacular of FAA, Assistant and Associate Administrator Organizations are known as staff offices and lines of business (LOBs), respectively.

Q.3 How will this change what you currently do?

A.3 How this Order changes what you currently do depends on the extent to which your organization currently engages Tribes in consultation. If your organization engages in activities that have a direct significant or unique impact on Tribes, and your consultations regarding those activities are consistent with the procedures in Section 9 of the Order, then it is likely that only the manner in which you document consultation will be affected. On the other hand, if your organization has been taking actions affecting Tribes without engaging them in consultation, the procedures in this Order will represent a whole new way of conducting business where Tribes are affected. The procedures in Section 9 serve as the basis for future consultation efforts.

The intent of this Order is to ensure that Federally Recognized Tribes are given notice of proposed FAA actions that will significantly or uniquely affect them, and are actively engaged in dialogue to seek their input on issues of concern to them. We expect staff offices and LOBs in the regions will develop regionally specific procedures, where fitting, to supplement the procedures in Section 9. This gives staff offices and LOBs the flexibility to design a consultation process that considers circumstances that may be unique to the region. Order 1210.20 is a clear sign of FAA's commitment to government-to-government consultations with Tribes, and provides for consistent implementation across the country.

Q.4 What are the first steps toward carrying out this Order?

A.4 The first step is for Regional Administrators to choose a person to be the Regional Tribal Consultation Official (RTCO). The RTCO will be a resource to staff offices and LOBs in the region for their consultation efforts (see Q. 9 for RTCO responsibilities).

Next, the RTCO should coordinate with the divisions and the centers (Southwest and Eastern Regions) to identify the need for supplementing the consultation procedures listed in Section 9. Affected Tribes in the region must be consulted regarding the regionally specific supplemental procedures. The RTCO must coordinate with the staff office or LOB to document the consultation and provide the record of consultation and the supplemental procedures to the appointed National Tribal Consultation Official in AEE-200.

Another early step in carrying out this Order should be for each RTCO to coordinate with the divisions and centers to establish a means to track consultations within the region and report outcomes on request to the National Tribal Consultation Official.

Also, per Section 8b of the Order, staff offices and the LOBs must review their current policies and procedures to ensure consistency with this Order.

Q.5 How do FAA organizations decide the need for consultation?

A.5 Other than where Tribes seek out FAA consultation, the decision about when to engage in consultation rests with the responsible official from the affected FAA organization. This is similar to decisions about National Environmental Policy Act or National Historic Preservation Act reviews where the responsible FAA official determines the review needed. Seeking input from the RTCO is proper when making this determination, but this decision is not the responsibility of the RTCO.

When deciding whether to consult with Tribes, the responsible FAA official must determine if the activity, program, or policy has a direct significant or unique impact on a Tribe. It may be useful to consider the following: Does the FAA action have "Tribal implications" as described in Executive Order 13175 (substantial direct effects on one or more Tribes)? Does the FAA action impose direct compliance costs on Indian Tribal governments? Does the FAA action preempt Tribal law? If so, consultation is probably appropriate.

Q.6 What cultural insights will FAA staff need to be aware of?

A.6 Cultural awareness is an important aspect of consultation and is critical to showing the respect expected of a government-to-government relationship. The RTCO should be a source of cultural background information. Also, within FAA there exists an organization called the Native American and Alaska Native Coalition of Federal Aviation Administration Employees (NAAN). NAAN has members in every FAA region and can identify FAA staff with relevant cultural experience. NAAN can be useful as a source for finding individuals from the affected Tribe, or with extensive knowledge of the culture and customs of the Tribe, to gain insights on how to conduct a successful consultation. The address for the NAAN website is: http://www.faanaan.org.

Other factors that FAA officials need to be aware of are the possible physical demands associated with consultations. Travel to events and meetings in the affected communities can be strenuous. The responsible FAA official must be aware of the conditions under which consultation takes place, and prepare for the demands of travel and be sensitive to cultural diversity.

Q.7 What are the roles and responsibilities of the NTCO?

A.7 The National Tribal Consultation Official (NTCO) is an appointed staff member within the Office of Environment and Energy in the AEE-200 division (Environment, Energy and Employee Safety). The NTCO has various responsibilities as shown in Attachment A. The NTCO will serve as a coordinator for the RTCOs and be the point of contact with the Department required by DOT Order 5301.1. Coordination with the RTCOs will include an early meeting to lay out expectations for documentation and reporting of consultation efforts and developing regionally specific consultation procedures to supplement the procedures in Section 9.

The NTCO may set up a Tribal Consultation Official Network similar to the FAA Environmental Network chaired by staff from AEE-200. The NTCO will provide relevant information to the RTCOs on items such as important legislative and regulatory initiatives coming out of Washington, and training opportunities for strengthening FAA government-to-government consultation efforts.

For issues that are national in scope and suitable for consultation, the NTCO will seek input from the RTCOs, and coordinate efforts to engage affected Tribes in a nationwide consultation.

The NTCO will also develop a means for agency-wide consultation tracking and reporting to comply with Departmental reporting requirements.

Q.8 What are the roles and responsibilities of the Regional Administrators for carrying out this Order?

A.8 The most important, immediate concern for the Regional Administrators is identifying a qualified RTCO to facilitate consultations in their region. The Regional Administrators will have discretion in deciding what qualifications are necessary for their RTCO. The RTCO is expected to have knowledge of and experience with diverse cultures. But the extent of that knowledge and experience for performing their duties will depend on regionally specific concerns and is up to the Regional Administrator to decide. Part of that decision will also involve whether to dedicate the RTCO solely to that position or assume the RTCO roles as part of collateral duties. The RTCO duties,

resources and level of effort can be spelled out in various ways such as a description in the Performance Management System evaluation for the individual, or in an announcement for a collateral duty assignment. Examples of ways to define the position are available from the NTCO in AEE-200. As FAA's consultation efforts mature, the level of effort for the RTCO may evolve beyond early expectations. The Regional Administrator should plan for reevaluating the RTCO position periodically to ensure they have the tools and time necessary to do the job.

This Order does not intend that the RTCO must be from the Regional Administrator's staff, but also does not preclude this. The RTCO can reside in any LOB or staff office within the region. Resource issues may influence what organization the RTCO comes from, or whether to create a new position for the RTCO.

Similar to identifying information on the cultures and customs of affected Tribes, Regional Administrators may wish to consult NAAN for suggestions on suitable qualifications and prospective candidates for the RTCO in their region.

In the event of a dispute between a Tribe and an FAA staff office or LOB, Regional Administrators are expected to facilitate resolution of the dispute. The Regional Administrator should be advised of the dispute by the RTCO, who should be tracking all ongoing consultation efforts of staff offices and LOBs in the region (See Q.9). If it becomes apparent that the Tribe and the affected FAA organization are at an impasse, the Regional Administrator, or the RTCO on the Regional Administrator's behalf, should alert ARC-1 and the NTCO that the dispute is being elevated to Headquarters for resolution. ARC-1 should be advised of the organizations involved so they can coordinate with the affected Assistant or Associate Administrator.

Q.9 What are the role and responsibilities of the RTCO?

A.9 The principal responsibility of the RTCO is to ensure that regional staff is aware of the contents and intent of this Order. The NTCO will aid this effort and coordinate among RTCOs. RTCO responsibilities are listed in Attachment A.

If the LOB divisions or staff offices in the region develop procedures to supplement the consultation procedures contained in Section 9, the RTCO must ensure that consultation on those supplements occurs with the affected Tribes in the region. This will require coordination with the LOBs and staff offices to document the consultation and completion of the supplemental procedures. More than one set of supplemental procedures may be applicable for the region. For example, each LOB and staff office must decide whether to supplement Section 9 with procedures that are unique to their organization. The intent of this Order is to provide enough flexibility for that to occur. The RTCO must track the development of such supplements and keep the documentation of the related consultation and outcome for submittal to the NTCO. Regional consultation should occur on all supplemental procedures at one time. This will prevent burdening Tribes with multiple consultations for the same reason, and should make the RTCO's job more manageable. If regionally specific supplemental procedures or guidance are developed, the responsible regional representative of the staff office or LOB must ensure that they follow appropriate coordination protocol for their organization. This will ensure national consistency across their staff office or LOB.

The RTCO is not responsible for conducting consultations with tribes for proposed actions of the LOBs or staff offices. That responsibility falls on the responsible FAA official in the LOB or staff office. The RTCO is a resource and a facilitator. The RTCO should be familiar with agency positions and techniques for alternative dispute resolution. It may be appropriate, and the LOBs or staff offices may choose, to invite the RTCO to take part in the consultations because of the RTCO's knowledge and experience with the affected Tribes. But it is not the intent of this Order to place the responsibility for all consultation in a region on the RTCO.

RTCOs should tell the NTCO of training needs and opportunities specific to RTCO responsibilities. The RTCO should also give the NTCO proper notice of regional consultation issues (for example, unresolved disputes that will likely require elevation for dispute resolution). The RTCO must track ongoing consultation and assist, when requested and as appropriate, if unresolved disputes require elevation up the chain of command of the LOB or staff office.

The RTCO acts as liaison with the NTCO at headquarters and is responsible for providing the NTCO, on request, with all records of consultation and outcomes.

Q.10 Does this Order affect Tribes that are not Federally recognized?

A.10 The policies and procedures in Order 1210.20 do not apply to Tribes that are not Federally recognized because those Tribes do not have the same government-to-government relationship with the Federal government as Federally Recognized Tribes.

Identify as stakeholders, where fitting, Tribes that are not Federally recognized, and include in public participation efforts undertaken by FAA as with any other stakeholder group. The consultation requirements of this Order are discretionary with Tribes that are not Federally recognized.

If you have additional questions regarding implementation of this Order, please direct them to Mr. Matthew McMillen in the Office of Environment and Energy, AEE-200, at (202) 493-4018.

Attachment A
Roles and Responsibilities Matrix

This matrix provides a list of positions along with their assigned roles and responsibilities as defined in FAA Order 1210.20. For ease of comprehension, the information contained in each column is defined below.

Column	What it Defines
Position	**Identifies each position (incl. overall organization) that has been defined to have a role/responsibility to carry out this Order.**
Roles/Responsibility	**Identifies the roles/responsibilities of the specific position**
Reference	**Identifies the paragraph number of the Order that correlates to the information**

Roles and Responsibilities Matrix
FAA Order 1210.20

Position	Roles/Responsibilities	Reference
Office of Environment and Energy (AEE)	**1)** Responsible for providing DOT with the FAA POC to the Department POC established under Order DOT 5301.1 **2)** Provides information to FAA Regional Tribal Consultation Officials (RTCOs) and other offices on the agency's AI/AN Consultation Policies and Procedures	8a
Regional Administrators (RA's)	**1)** Names RTCO for each region **2)** Inform AEE-1 of any changes in RTCO	8b
Each Assistant or Associate Administrator Organization	**1)** Consults w/ NTCOs and RTCOs and: a) Reviews/updates Policies/Procedures/Activities periodically b) Insures ((a) above) are consistent w/policies of Order. c) May develop more detailed guidance to carry out Order d) Undertakes consultation	8b 9a
Each Region	**1)** Staff offices and LOBs within the region may supplement consultation procedures in Order to establish an effective consultation procedure for the region.	8b

KEY

AI = American Indian
AN = Alaska Native
Order = FAA Order 1210.20
POC= Point of Contact

(Continued on next page)

Roles and Responsibilities Matrix
FAA Order 1210.20
(Continued)

Position	Roles/Responsibilities	Reference
NTCO	**1)** Coordinates information between the RTCO and Departmental POC	8a
	2) Keeps a directory of internal POC's	
	3) May set up network of internal and external contacts/committees	
	4) May provide info to Assistant and Associate Administrator Organizations	
	5) May participate in activities (ex: workshops, conferences) to improve internal and external awareness of AI and AN concerns.	
	6) May set up training/engage in professional development activities.	
	7) For actions national in scope, helps affected regions tailor procedures to insure proper consultation	9
RTCO	**1)** May provide information to Assistant and Associate Administrator Organizations	8a
	2) May participate in activities (workshops, conferences) to improve internal and external awareness of AI and AN concerns.	
	3) May set up training/engage in professional development activities.	
	4) Cooperates with NTCO to assure a consistent agency-wide ONE DOT approach.	
	5) Provides information to NTCO upon request.	
	6) Keeps a list of Federally Recognized tribes and their official designees	8b
	7) Keeps an up-to-date record of all consultations initiated with Federally Recognized Tribes which include: a) Description of consultation b) Outcome c) Info that shows a reasonable good faith effort to obtain/consider appropriate Tribal input in the decision making	
	8) Documents the procedure and consultation undertaken by Assistant or Associate Administrator Organizations within the region to set up a region specific consultation procedure (in addition to procedures defined in section 9 of the Order)	

KEY

AI = American Indian
AN = Alaska Native
Order = FAA Order 1210.20
POC= Point of Contact