



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.

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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.

<u>Column</u> Position	<u>What it Defines</u> 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)	<ol style="list-style-type: none"> 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)	<ol style="list-style-type: none"> 1) Names RTCO for each region 2) Inform AEE-1 of any changes in RTCO 	8b
Each Assistant or Associate Administrator Organization	<ol style="list-style-type: none"> 1) Consults w/ NTCOs and RTCOs and: <ol style="list-style-type: none"> 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	<ol style="list-style-type: none"> 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

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