



Ysleta del Sur Pueblo

Tribal Council

119 South Old Pueblo Road • P.O. Box 17579 • El Paso, Texas 79917 • (915) 859-8053 • Fax: (915) 859-4252

Dear State Department's Office of Management Policy, Rightsizing, and Innovation:

The following responses to the questions set out in your letter of January 7, 2010 concerning Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, are submitted on behalf of the Ysleta del Sur Pueblo.

What actions or events should trigger consultation?

As per Executive Order 13175, any policy decision which has tribal implications triggers consultation.

"Tribal implications" should not be narrowly defined as, for example, "a substantial direct impact on an Indian tribe." Nor can any list identify every type of policy decision on which consultation should be conducted. The type and scope of interest being considered are the determining factors, and such factors are often more important to a tribe than the agency. "Tribal implications" should be broadly construed and, when in doubt, the Agency should undertake consultations.

Some interests per se require consultation: (1) anything affecting the receipt or disbursements or monies by a tribe, especially funding and formulas and unfunded mandates; (2) any programmatic changes, including grants, such as creation or termination of a program, or changes in eligibility, compliance, and reporting requirements; and (3) anything affecting any changes in ownership, access, or use of real property to which a tribe is culturally or historically connected.

How far in advance should the Department give notice of consultation?

As soon as the Agency realizes that the policy decision implicates the tribe but no less than ninety (90) days before any decision making.

Who should participate in consultation?

Each tribe which is implicated by the policy decision should be consulted. Notice should be given to the Tribal Governor and if known to the Agency, the appropriate tribal official. No tribe should be made a party to contemporaneous multi-party consultation without the consent of the tribe.

What procedures will ensure productive consultation?

All Agencies should seek master agreements with individual tribes setting forth consultation protocol. Absent such master agreement, first contact between the Agency and the tribe should be to establish a consultation protocol to be memorialized and signed by the parties. The protocol should establish a clear timeline for actions throughout consultation and the process for comments and establishing a final disposition. Each party should be provided with contact information.

All notices should be sent by the Agency in writing and verified via e-mail or facsimile transmission. In the absence of a response, personal contact, including telephone calls, should be undertaken. The Agency cannot abandon consultation efforts unless explicitly waived by the tribe.

Travel should be kept to a minimum with meetings held on the reservation whenever possible.

Tribes should be provided any and all draft materials/information/notices with reasonable opportunity and ability to comment. With respect to matters that will be published, the tribe should be given a copy 30 days prior to publication.

How should consultation be documented?

Memorialized in writing setting forth content of consultation, with a signature block for tribe's agreement as to substance and written notice of reasonable opportunity for comment if the tribe disagrees. Sign-in sheets and mail/telephone logs do not constitute documentation.

What procedures should the Department use to follow up with your tribe after consultation?

There should always be follow up. None exists at this time.

Tribes should not only be consulted on policy decisions but also on implementation, if possible and not previously addressed after the decision is made.

Agency and tribe should engage in immediate post-consultation debriefing to critique and improve the process and modify the master agreement.

What, if any, alternatives might be employed—such as conferences, workshop sessions, social media, or a task force—to improve communication and coordination with your tribe?

There needs to be a federal clearing house of tribal consultation with a website on which various matters are posted. All matters on which tribal consultation, whether nation-wide or tribe specific, should be posted on the website. This permits non-noticed tribes to determine whether their interests are implicated.

Tribes can post the names of counties and specific locations which the Agencies can check to determine which tribes claim an interest and should be consulted.

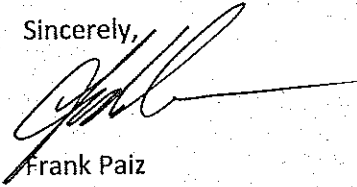
Whenever an Agency has entered into a master agreement with a tribe for consultation and the tribe consents to publication of the master agreement at the clearinghouse website, such master agreement may serve as the basis for consultation by any other agency with that tribe.

Agencies should coordinate federal consultation meetings under a single calendar maintained on the website. Agencies coordinate one to two consultation convenings per year to address pending consultation matters.

Tribes should be permitted to request consultation on any matter with an agency. If consultation is denied, the Agency must provide the tribe with written notice identifying the law or specific facts substantiating its refusal. Lack of money is not a sufficient reason for no consultation.

Tribal governments are for the most part understaffed and underfunded, and tribal calendars differ significantly. Consultation is a costly, time-consuming, and burdensome process for tribes, but a necessary process for their preservation and the welfare of their people. This attitude should permeate all Agency actions vis a vis the tribes.

Sincerely,

A handwritten signature in black ink, appearing to read 'Frank Paiz', with a long horizontal line extending to the right.

Frank Paiz
Governor