

STATE OF NEW MEXICO
HIDALGO COUNTY

COMMISSIONERS

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Submitted Via Email to info@acus.gov

Administrative Conference of the United States
Suite 706 South
1120 20th Street NW,
Washington, DC 20036

Re: Consultation with State, Local, and Tribal Governments in Regulatory Policymaking

To Whom it May Concern,

These comments are being submitted by Hidalgo County.

1. What has been your experience regarding consultations with a Federal agency engaging in regulatory policymaking?

Hidalgo County has been a part of the Coalition of Arizona/ New Mexico Counties, the Coalition started 35 years ago federal agencies flat out refused consultation with counties and other local governments. In the late 1980's counties and local governments began reacting to federal regulatory actions that were generating significant social, cultural and economic impacts on their jurisdictions. This led to a deep dive into federal statutes and regulations governing coordination, cooperation and consultation with state, tribal and local governments.

There were no consultations with counties and other local governments for the listing and no consultations prior to the Regional Forester's order shutting down the forest.

2.
 - a. If you have been involved in a consultation, how often are (or were) you contacted by Federal agencies to consult on a particular regulatory policy?

Starting in the 1990s contact by federal agencies requesting participation in the regulatory process was non-existent. It was only due to persistent petitioning that a few agencies began to reluctantly communicate. Litigation was required to force other agencies to provide notice and invite consultation.

- b. How often do (or did) you contact Federal agencies to request a consultation on a given regulatory policy?

After three decades of notifying federal agencies of our desire to participate we are often surprised to locate a federal register notice or with the Forest Service a notice in their "Schedule of Proposed Actions" that counties and local governments were not treated to early notification.

- c. What was your experience with requesting a consultation?

Virtually all federal agencies, in the past, did not positively respond with requests for consultation. Lengthy and expensive litigation was required to force consultation. Most counties and local government do not have the fiscal resources to pursue prolonged litigation.

- d. What tasks do (or did) you undertake as part of the consultation effort?

Coalition members pursued and continue pursuing consultation, coordination and cooperating agency tasks. Even if we are successful in participating in these capacities it is often nothing more than the agency is checking a box than

effectively considering our input.

- e. At what stage in the regulatory policymaking process were you consulted by a Federal agency?

In most instances it is only at the eleventh hour we become aware of a regulatory action and contact the agency with our wish to participate.

- f. In your experience, was that consultation timed too early, appropriately, or too late?

Consultation is often too late for county or local governments to meaningfully participate.

3. If you have been involved in a consultation:

- a. how did you feel your feedback during the consultation process was used by Federal agencies?

The thirty year experience has been federal agencies formulate a decision and go through the consultation decision making process with little if any attention to county or local government input.

- b. Were you satisfied with how your input was used? Why or why not?

On many occasions many hours were spent gathering data and analysis for input into the process only to be disappointed with a lack of incorporation into the federal agency analysis and decision. The primary reason for making comment and participation is to enter the information into the administrative record to preserve standing for challenging the decisions in court.

- c. Do you recall whether the Federal agency explained to you how they incorporated your feedback into the regulatory policymaking process?

Most often there is no explanation for how they incorporated or why they didn't.

- d. Do you have specific suggestions for incorporating feedback into the regulatory policymaking process?

The suggestion is for agencies to obey the Congressionally enacted laws and their own regulations for recognizing county and local government coordination and consultation. A more serious suggestion is for the federal government obey the Constitutionally mandated recognition of state, tribal and local government sovereignty, authorities and jurisdiction.

4. In your experience, are there certain types of information that may be useful to share during consultation but which you may not want to disclose, for example confidential or culturally sensitive information? If so, do you have any specific recommendations for how Federal Government agencies can best manage this information as it considers a regulatory policy that may have federalism or Tribal implications?

The only information that should not be made public or required to be disclosed is that which may violate an individual's right to privacy. A federal agency should not withhold disclosure of any information they use for decision making on lands outside of Tribal jurisdictions. To do so would be to open the opportunity for totally subjective decisions in violation of the Data Quality Act and other statutory provisions for reliance on accurate scientific information.

5. In your experience, how easy or difficult was it to locate the appropriate agency official with responsibility for State, local, or Tribal government matters when seeking to or engaging in consultation efforts? How, if at all, did this impact consultation efforts? Do you have any specific recommendations to facilitate communication among Federal, State, local, and Tribal government officials for consultations on regulatory policymaking?

Now that our member counties and other local governments have educated themselves in the procedures know who the responsible officials are. The real need is for federal responsible officials to know who they should be contacting in counties, Tribes and local governments.

6. If you are familiar with agency policies on State, local, or Tribal government consultation, what are your thoughts on such policies?

There should be administrative consequences for officials who neglect or ignore their responsibilities for coordination, cooperation and consultation.

7. In your experience, what makes a consultation successful?

When consultation actually occurs. The definition of consult is to seek information or advice from (someone with expertise in a particular area. Counties, Tribes and local governments have special expertise in their social, cultural and economic conditions.

- a. What makes a consultation unsuccessful?

The failure to consult early in the process and the failure to take seriously the information they receive from local government. Many federal agency responsible officials get transferred into their positions, make discussions and are then transferred to another location. Rarely do they get to observe, learn or suffer the consequences from the decisions they make.

- b. Do you have any specific recommendations on reducing barriers to effective and meaningful consultation among and between Federal, State, local, and Tribal government officials?

We recommend stationing federal agency officials long term so that they can develop effective relationships and understanding of local customs, cultures, ecosystems and economies. We have heard that it has become a federal policy to move personnel regularly so that they do not, "go native." In other words that personnel should not develop relationships and empathy with local populations.

8. In your opinion, what role can State, local, and government officials play to facilitate consultation, and how should Federal Government agencies encourage such actions, if at all?

State, county and local government officials should develop effective and clear land and resource management plans and policies and ensure those are communicated to federal officials. Federal agency officials should solicit those plans and policies and not only read them but incorporate those plans and policies into regulatory actions that benefit the affected interests of those local jurisdictions.

Thank you for this opportunity to comment on federal consultation with State, Tribal and Local Governments. If you have any questions, call Hidalgo County at 575-542-9428.

Sincerely,



Tisha Green
Hidalgo County Manager